

(25,900)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 477.

THE HARRIMAN NATIONAL BANK OF NEW YORK,
PLAINTIFF IN ERROR,

vs.

HARRY H. SELDOMRIDGE, AS RECEIVER OF THE MER-
CANTILE NATIONAL BANK OF PUEBLO, COLORADO.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT.

INDEX.

| | Original. | Print |
|---|-----------|-------|
| Caption | <i>a</i> | 1 |
| Transcript of record from the District Court of the United States for the Southern District of New York..... | 1 | 1 |
| Summons | 1 | 1 |
| Complaint | 2 | 2 |
| Amended answer | 5 | 3 |
| Exhibit A—Promissory note for \$30,000 to bank, Feb- ruary 10, 1915 | 15 | 8 |
| Extracts from clerk's minutes | 17 | 10 |
| Judgment | 19 | 10 |
| Order denying motion for new trial..... | 20 | 11 |
| Petition for writ of error | 22 | 12 |
| Assignments of error | 24 | 13 |
| Order allowing writ of error..... | 57 | 30 |
| Writ of error | 58 | 31 |

| | Original. | Print |
|--|-----------|-------|
| Citation | 59 | 31 |
| Order fixing bond | 61 | 32 |
| Bond on writ of error | 62 | 33 |
| Order overruling motion for new trial..... | 66 | 35 |
| Bill of exceptions | 70 | 37 |
| Testimony of John A. Noble..... | 71 | 38 |
| Motion to dismiss | 78 | 41 |
| Testimony of John A. Noble (recalled)..... | 79 | 42 |
| Florence M. Buchanan | 82 | 44 |
| Homer S. Tripp | 86 | 46 |
| Lewis M. Reeves | 90 | 48 |
| George F. Trotter | 91 | 49 |
| John H. Werkheiser | 94 | 50 |
| J. A. O'Brien | 95 | 51 |
| Joe H. Franz | 96 | 52 |
| William Denny Wagner | 97 | 52 |
| W. T. Wheatley | 98 | 53 |
| William B. Slaughter | 103 | 56 |
| Florence M. Buchanan (recalled)..... | 141 | 78 |
| Lewis M. Reeves (recalled)..... | 145 | 80 |
| Letters, Thatcher to directors of Bank of Silverton, February 6, 1915 | 147 | 81 |
| Minutes of meeting of directors of First National Bank of Silverton, February 11, 1915..... | 147 | 82 |
| Testimony of J. H. Werkheiser (recalled)..... | 148 | 82 |
| William D. Grisard | 151 | 84 |
| William D. Wagner | 153 | 85 |
| E. T. Adair | 154 | 85 |
| W. T. Wheatley | 158 | 87 |
| John A. Noble (recalled)..... | 162 | 89 |
| Motion to dismiss | 165 | 91 |
| Memorandum opinion at conclusion of trial..... | 165 | 91 |
| Plaintiff's Exhibit 1—Appointment of receiver of Mer- cantile Bank | 175 | 97 |
| Exhibit 2—Appointment of receiver of Mer- cantile Bank | 175 | 97 |
| Exhibit 3—Telegram, Harriman Bank to Mercantile Bank, February 17, 1915..... | 176 | 97 |
| Exhibit 4—Letter, C. C. Slaughter, cashier, to Harriman Bank, February 22, 1915.... | 176 | 98 |
| Exhibit 5—Letter, Harriman Bank to C. C. Slaughter, cashier, February 25, 1915.... | 177 | 98 |
| Exhibit 6—Letter, receiver to Harriman Bank, April 2, 1915 | 178 | 98 |
| Exhibit 7—Letter, receiver to Harriman Bank, June 19, 1915 | 178 | 99 |
| Exhibit 8—Letter, Harriman Bank to W. B. Slaughter, president, March 24, 1915..... | 179 | 99 |
| Exhibit 9—Telegram, W. B. Slaughter, presi- dent, to Harriman Bank, March 23, 1915.. | 180 | 100 |

| | | |
|--|-----|-----|
| Plaintiff's Exhibit 10—Letter, Harriman Bank to W. B. Slaughter, February 10, 1915..... | 180 | 100 |
| Exhibit 11—Letter, Harriman Bank to C. C. Slaughter, February 10, 1915..... | 181 | 101 |
| Exhibit 12—Telegram, Grisard, assistant cashier, to Harriman Bank, March 25, 1915 | 182 | 101 |
| Exhibit 13—Telegram, G. W. Goodell, bank examiner, to Harriman Bank, March 29, 1915 | 183 | 101 |
| Exhibit 14—Letter, W. B. Slaughter to C. C. Slaughter, February 27, 1913..... | 183 | 102 |
| Exhibit 15—Letter, C. C. Slaughter to W. B. Slaughter, December 2, 1913..... | 184 | 102 |
| Exhibit 16—Letter, W. B. Slaughter to C. C. Slaughter, December 5, 1913..... | 186 | 103 |
| Exhibit 17—Waverly Company draft..... | 187 | 104 |
| Exhibit 18—Debit ticket, \$20,000 | 187 | 104 |
| Exhibit 19—Check, W. B. Slaughter, C. C. S. | 188 | 105 |
| Exhibit 19a—Check for telephone stock.... | 188 | 105 |
| Exhibit 20—Letter, Harriman Bank to C. C. Slaughter, cashier, January 10, 1912..... | 189 | 105 |
| Exhibit 21—Letter, W. B. Slaughter, by C. C. Slaughter, to Harriman Bank, April 29, 1912 | 192 | 107 |
| Exhibit 22—Telegram, W. B. Slaughter to Harriman Bank, April 29, 1912..... | 193 | 108 |
| Exhibit 23—Letter, C. C. Slaughter, cashier, to Harriman Bank, May 3, 1912..... | 194 | 108 |
| Exhibit 24—Letter, W. B. Slaughter to Harriman Bank, May 3, 1912..... | 195 | 109 |
| Exhibit 25—Telegram, C. C. Slaughter to W. B. Slaughter, January 19, 1915 | 195 | 109 |
| Exhibit 26—Letter, C. C. Slaughter to W. B. Slaughter, January 18, 1915..... | 196 | 109 |
| Exhibit 27—Letter, C. C. Slaughter to W. B. Slaughter, January 25, 1915..... | 198 | 111 |
| Exhibit 28—Letter, C. C. Slaughter to W. B. Slaughter, February 8, 1915 | 201 | 112 |
| Exhibit 29—Letter, C. C. Slaughter to W. B. Slaughter, February 17, 1915..... | 203 | 113 |
| Exhibit 30—Telegram, W. B. Slaughter to C. C. Slaughter, January 20, 1915..... | 205 | 114 |
| Exhibit 31—Letter, W. B. Slaughter to C. C. Slaughter, January 20, 1915..... | 206 | 115 |
| Exhibit 32—Letter, W. B. Slaughter to C. C. Slaughter, January 25, 1915..... | 208 | 116 |
| Exhibit 33—Letter, W. B. Slaughter to C. C. Slaughter, February 2, 1915..... | 210 | 117 |
| Exhibit 34—Letter, W. B. Slaughter to C. C. Slaughter, February 6, 1915..... | 211 | 117 |

| | Original. | Print |
|--|-----------|-------|
| Plaintiff's Exhibit 35—Letter, W. B. Slaughter to C. C. Slaughter, February 9, 1915..... | 214 | 119 |
| Exhibit 36—Letter, W. B. Slaughter to C. C. Slaughter, February 10, 1915..... | 215 | 119 |
| Exhibit 37—Check to M. D. Thatcher, \$35,000, February 6, 1915 | 217 | 121 |
| Exhibit 38—Letter, Harriman Bank to W. B. Slaughter, March 30, 1915 | 218 | 121 |
| Exhibit 39—Letter, W. B. Slaughter to C. C. Slaughter, December 15, 1914..... | 219 | 122 |
| Exhibit 40—Letter, W. B. Slaughter to C. C. Slaughter, January 23, 1915 | 220 | 122 |
| Exhibit 41—Letter, W. B. Slaughter to C. C. Slaughter, January 25, 1915..... | 222 | 123 |
| Exhibit 42—Letter, W. B. Slaughter to C. C. Slaughter, January 30, 1915 | 224 | 124 |
| Exhibit 43—Letter, W. B. Slaughter to C. C. Slaughter, February 15, 1915..... | 227 | 126 |
| Exhibit 44—Power of attorney from W. B. Slaughter, February 15, 1915 | 230 | 127 |
| Exhibit 45—Letter, C. C. Slaughter to W. B. Slaughter, January 22, 1915..... | 230 | 128 |
| Exhibit 46—Letter, C. C. Slaughter to W. B. Slaughter, February 3, 1915..... | 232 | 129 |
| Exhibit 47—Letter, C. C. Slaughter to W. B. Slaughter, February 7, 1915 | 235 | 130 |
| Exhibit 48—Oath of W. B. Slaughter as director of First National Bank of Silverton | 237 | 131 |
| Exhibit 49—Statement of account of Mercantile Bank with Harriman Bank February 1 to February 19, 1915..... | 239 | 133 |
| Exhibit 50—Statement of account, Mercantile National Bank with Harriman National Bank, March 1 to March 27, 1915.. | 241 | 136 |
| Defendant's Exhibit A—Telegram, Harriman Bank to Mercantile Bank, February 17, 1915.... | 245 | 141 |
| Exhibit B—Letter, Clarke to Slaughter, February 18, 1915 | 245 | 141 |
| Exhibit C—Letter, Slaughter to Clark, June 25, 1915 | 246 | 141 |
| Exhibit D—Telegram, Noble to Slaughter, March 26, 1915 | 247 | 142 |
| Exhibit E—Letter, Noble to Slaughter, March 26, 1915 | 247 | 142 |
| Exhibit F—Letter, Slaughter to Harriman, January 28, 1915 | 249 | 143 |
| Exhibit G—Telegram, Harriman Bank to Slaughter, February 1, 1915 | 251 | 144 |
| Exhibit H—Harriman to Slaughter, February 1, 1915 | 251 | 144 |

INDEX.

v

| | Original. | Print |
|---|-----------|-------|
| Defendant's Exhibit I—Letter, W. B. Slaughter to Harriman Bank, February 7, 1915..... | 252 | 145 |
| Exhibit J—Signature card of officers of Mercantile Bank | 254 | 145 |
| Exhibit K—Note of W. B. and C. C. Slaughter, February 10, 1915, for \$30,000 | 254 | 146 |
| Exhibit L—Certificate for 250 shares of stock Mercantile National Bank | 257 | 147 |
| Exhibit M—Certificate for 250 shares Mercantile National Bank | 259 | 148 |
| Exhibit N—Forged certificate for 400 shares First National Bank of Silverton | 260 | 149 |
| Exhibit O—Telegram, Harriman Bank to G. W. Goodell, bank examiner, March 29, 1915 | 262 | 150 |
| Exhibit P—Deposit ticket for \$30,000, Feb- ruary 8, 1915 | 262 | 150 |
| Exhibit Q—Genuine certificate, 450 shares First National Bank of Silverton stock. | 263 | 150 |
| Exhibit R—Check, W. B. Slaughter, April 14, 1913 | 264 | 151 |
| Exhibit S—Minutes of directors' meeting, Mercantile National Bank, July 26, 1913 | 265 | 151 |
| Exhibit T—Letter, W. D. Grisard to W. B. Slaughter, December 12, 1913..... | 266 | 152 |
| Exhibit U—Signature card of officers of Mercantile National Bank | 267 | 153 |
| Stipulation as to record | 268 | 153 |
| Stipulation as to bill of exceptions..... | 269 | 153 |
| Judge's certificate to bill of exceptions..... | 269 | 154 |
| Clerk's certificate | 270 | 154 |
| Opinion, Coxe, J. | 271 | 155 |
| Judgment | 277 | 158 |
| Petition for writ of error | 279 | 159 |
| Order allowing writ of error | 281 | 160 |
| Assignment of errors | 283 | 160 |
| Bond on writ of error | 313 | 181 |
| Clerk's certificate | 315 | 183 |
| Writ of error | 316 | 183 |
| Citation and service | 319 | 185 |



United States Circuit Court of Appeals for the Second Circuit.
THE HARRIMAN NATIONAL BANK OF NEW YORK, Plaintiff in Error
(Defendant Below),
against
HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National
Bank of Pueblo, Colorado, Defendant in Error (Plaintiff below).

TRANSCRIPT OF RECORD.

Error to the District Court of the United States for the Southern
District of New York.

United States District Court of Appeals, Second Circuit. Filed
Nov. 3, 1916. William Parkin, Clerk.

1 *Summons.*

United States District Court for the Southern District of New York.

L. 14-275.

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National
Bank of Pueblo, Colorado,
against

THE HARRIMAN NATIONAL BANK OF NEW YORK.

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action,
and to serve a copy of your answer on the plaintiff's attorney within
twenty days after the service of this summons, exclusive of the day
of service; and in case of your failure to appear, or answer, judgment
will be taken against you by default for the relief demanded in the
complaint.

Witness, the Hon. Charles M. Hough, Judge of the District Court
of the United States for the Southern District of New York, at the
City of New York, this 1st day of October, in the year one thousand
nine hundred and fifteen.

[SEAL.]

ALEX. GILCHRIST, JR., Clerk.

Barber, Watson & Gibboney, Plaintiff's Attorneys, Office and Post
Office Address, 165 Broadway, Borough of Manhattan, New York
City.

Complaint.

United States District Court, Southern District of New York.

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National Bank of Pueblo, Colorado, Plaintiff,

against

THE HARRIMAN NATIONAL BANK OF NEW YORK, Defendant.

The plaintiff above named by Barber, Watson & Gibboney, his attorneys, complains of the above named defendant, and alleges as follows:

First. The Mercantile National Bank of Pueblo, Colorado, is and was, at the times hereinafter mentioned, a banking corporation created, organized and existing under the laws of the United States, having its domicile in the City of Pueblo, in the State of Colorado. On March 29, 1915, the Comptroller of the Currency of the United States found said Bank to be insolvent, and thereupon said Comptroller duly appointed one Francis A. Chapman, Receiver of said Bank, and thereafter said Francis A. Chapman resigned and said Comptroller duly appointed the plaintiff Receiver of said Bank, with all the powers given to or imposed on a Receiver under the provisions of the Statutes of the United States relating to Re-

3 ceivers of National Banks. The plaintiff, a citizen and resident of the State of Colorado, was duly commissioned and duly qualified as such Receiver and entered upon the discharge of his duties and is now, under the direction of said Comptroller, engaged in winding up the affairs of said Bank.

Second. The Harriman National Bank of the City of New York is a corporation created and existing under the Laws of the United States relating to National Banks, and has its domicile and place of business in the City of New York and State of New York, is a citizen and resident of said State, and is and was, during the times hereinafter mentioned, engaged in the general banking business in said city.

Third. Prior to March 29, 1915, the said The Mercantile National Bank of Pueblo, Colorado, maintained an account with said defendant and from time to time there was deposited with it to the credit of The Mercantile National Bank of Pueblo, Colorado, large sums of money, which were collected for it by the defendant or were remitted to it for account of the said The Mercantile National Bank of Pueblo, Colorado, or were deposited with defendant by others to its credit, upon an agreement entered into between the said The Mercantile National Bank of Pueblo, Colorado, and the said defendant.

Fourth. Pursuant to the aforesaid agreement there remains deposited with the defendant to the credit of the said The Mercantile National Bank of Pueblo, Colorado, and of the plaintiff herein as its Receiver, the sum of Thirty thousand dollars (\$30,000).

4 Fifth. Although the plaintiff has often, and particularly on the 2nd day of April, 1915, demanded the payment to him of the said sum, the defendant has refused to pay the same, or any part thereof, and remains indebted to the plaintiff in the sum of Thirty thousand dollars (\$30,000), together with interest thereon from the 2nd day of April, 1915, at the rate of six per cent. per annum.

Wherefore, plaintiff demands judgment against the defendant for the sum of Thirty thousand dollars (\$30,000), with interest thereon at the rate of six per cent. per annum from April 2nd, 1915, together with the costs and disbursements of this action.

BARBER, WATSON & GIBBONEY,
Attorneys for Plaintiff.

Office and P. O. Address, 165 Broadway, Borough of Manhattan, New York City.

STATE OF COLORADO,

County of Pueblo, United States of America, ss:

Harry H. Seldomridge, being duly sworn, deposes and says: That he is the plaintiff in the above entitled action and that he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge except as to the mat-
5 ters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

HARRY H. SELDOMRIDGE.

Subscribed and sworn to before me this 27th day of September, 1915.

[SEAL.]

FLORENCE M. BUCHANAN,
Notary Public.

Amended Answer.

District Court of the United States, Southern District of New York.

H. H. SELDOMRIDGE, as Receiver of the Mercantile National Bank of Pueblo, Colorado, Plaintiff,

against

HARRIMAN NATIONAL BANK OF NEW YORK, Defendant.

The defendant, for its amended answer to the plaintiff's complaint herein, by Wesselman & Kraus, its attorneys, respectfully shows to this Court and alleges:

6 First. This defendant denies that it has any knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "First" of the plaintiff's complaint herein.

Second. Defendant denies the allegations contained in paragraphs numbered "Fourth" and "Fifth" of the plaintiff's complaint herein.

Further answering, and as and for a separate and distinct defense, this defendant alleges:

Third. That heretofore and prior to the 28th day of January, 1915, one W. B. Slaughter was President and one C. C. Slaughter was Cashier of the Mercantile National Bank of Pueblo, Colorado, which said bank prior to and at said time maintained an account with this defendant, and from time to time deposited with this defendant divers sums of money.

Fourth. That on the 28th day of January, 1915, or thereabouts, there was received by this defendant what purported to be an application from the said W. B. Slaughter for a loan of Thirty thousand dollars, the said application purporting to be signed in the name of W. B. Slaughter and purporting to have been written or dictated by him, in which application he applied to this defendant for a loan of Thirty thousand dollars for sixty days, and then and there in said application agreed to deliver to this defendant his note signed by himself, the said W. B. Slaughter and C. C. Slaughter, and to deposit as collateral security for the payment of said loan, 500 shares of the stock of the Mercantile National Bank of Pueblo, Colorado, aforesaid, and 400 shares of the First National Bank of Silverton, Colorado.

Fifth. That this defendant in the belief that the said letter was written or dictated by the said W. B. Slaughter, and in reliance upon the truth of the statements therein contained, and believing and relying that the said statements were made by the said W. B. Slaughter, agreed to and with W. B. Slaughter, believing that it was directing its acceptance of the proposition to the said W. B. Slaughter and to no other person, to make said loan upon the terms offered in said application of January 28th, 1915.

Sixth. That thereafter this defendant received what purported to be a letter signed by the said W. B. Slaughter containing a promissory note purporting to have been signed by the said W. B. Slaughter and C. C. Slaughter, a copy of which note is hereto annexed and made a part hereof, and also received with said note certain alleged certificates of stock, to wit, certificates Nos. 3 and 4 of the Mercantile National Bank of Pueblo, Colorado, aggregating in amount 500 shares of the capital stock of said bank, and each thereof purporting to be endorsed on the back in the name of W. B. Slaughter, and a certificate purporting to be certificate No. 109 of the First National Bank of Silverton, Colorado, certifying that the said W. B. Slaughter was the owner of 400 shares of the capital stock of the said First National Bank of Silverton, Colorado, which said certificate purported to bear the seal of the First National Bank of Silverton, Colorado, and to be signed by the Cashier and President thereof, and on the back thereof a certificate purporting to be signed by the said W. B. Slaughter transferring said certificate in blank.

Seventh. That this defendant believing the said note to have been actually signed by the said W. B. Slaughter and the said C. C.

Slaughter in their own handwriting, and by each of them, each for himself, and relying upon the genuineness of the said signatures, and believing that the said stock of the Mercantile National Bank of Pueblo, Colorado, to have been regularly endorsed on the back thereof by the said W. B. Slaughter himself, by himself, and in his own handwriting, for the purpose of transferring the same to this defendant as collateral security for the said note, and believing that the certificate No. 109 of the First National Bank of Silverton, Colorado, to be a genuine certificate certifying that the said W. B. Slaughter was the owner of 400 shares of the capital stock of the First National Bank of Silverton, Colorado, and that the same was regularly and duly signed with the genuine signatures of the officers of the said Bank, and that the seal thereon was the genuine seal of said Bank, and that the signature of W. B. Slaughter to the transfer of the certificate on the back thereof, through which the same was supposed to be transferred to this defendant, was the signature of W. B. Slaughter in his handwriting, signed by himself, and in reliance upon those facts, and not otherwise, agreed to loan to the said W. B. Slaughter the sum of Thirty thousand dollars, by placing the sum of Thirty thousand dollars, to the credit of the said W. B. Slaughter upon the books of the Harriman National Bank, the defendant herein.

9 Eighth. That thereafter this defendant received a telegram as follows:

"Harriman National Bank, N. Y.:

Place thirty thousand personal account W. B. Slaughter our Credit.
MERCANTILE NATIONAL BANK."

Ninth. That this defendant believing that said telegram was sent by direction of the said W. B. Slaughter, and the said W. B. Slaughter intended thereby to instruct this defendant to place the proceeds of a loan which the defendant had agreed to make to the said W. B. Slaughter to the credit of the Mercantile National Bank of Pueblo, Colorado, did, subject to confirmation of the said telegram by the said W. B. Slaughter in his own handwriting and in his own name, transfer on the books of The Harriman National Bank, the said sum of Thirty thousand dollars so placed to the credit of the said W. B. Slaughter to the credit of the Mercantile National Bank of Pueblo, Colorado, but subject to a confirmation of said telegram by the said W. B. Slaughter under his own hand, and so notified the said W. B. Slaughter.

Tenth. That no confirmation being received from the said W. B. Slaughter of the said telegram after confirmation thereof was requested, this defendant cancelled the said credit item of Thirty thousand dollars made in favor of the said Mercantile National Bank of Pueblo, Colorado, and thereupon the amounts shown on the defendant's books as being theretofore due and owing from The Harriman National Bank to the Mercantile National Bank of Pueblo, Colorado, was decreased to the extent of Thirty thousand dollars.

10 Eleventh. That for the reasons hereinafter stated this defendant

also cancelled the said credit made on its books in favor of the said W. B. Slaughter for the said sum of Thirty thousand dollars so attempted to be borrowed in his name upon the said note, hereto annexed, and the security heretofore set forth, and this defendant did duly rescind and cancel the entire transaction wherein the said Thirty thousand dollars was agreed to be loaned by this defendant to a person representing himself to be the said W. B. Slaughter.

Twelfth. That as hereinbefore stated, this defendant agreed to loan said money upon the representations made to it, and in the belief of the truth thereof and relying and believing that the said note bore the genuine signature of the parties signing it, and that the said stock was in all respects genuine and regular, and the transfers thereof to this defendant were genuine and regular.

Thirteenth. That the said representations hereinbefore set forth were false and untrue in that the name W. B. Slaughter signed to the said note, hereto annexed and made a part hereof, was not and is not the signature of the said W. B. Slaughter, and was not made by him, but was made by some other person, all of which was known to the Mercantile National Bank of Pueblo, Colorado, its agents and employees.

11 Fourteenth. That the signature W. B. Slaughter purporting to be signed to the certificates of transfer on the back of certificates Nos. 3 and 4 of the Mercantile National Bank of Pueblo, Colorado, such certificates of transfer being the means whereby the said certificates of stock were attempted to be transferred to this defendant, was not and is not the genuine signature of W. B. Slaughter, and was not signed by him, but was signed by some person other than the said W. B. Slaughter, all of which was known by the Mercantile National Bank of Pueblo, Colorado, its agents and employees.

Fifteenth. That certificate No. 109, purporting to be a certificate showing the ownership in W. B. Slaughter of 400 shares of the capital stock of the First National Bank of Silverton, Colorado, is not a genuine certificate of ownership of said stock in said Bank, but is forged in that the signature thereon purporting to be the signature of the Cashier and President of said Bank are not the signatures of such officials, and the seal affixed thereto purporting to be the seal of the First National Bank of Silverton, Colorado, is not the seal of said Bank but is a forgery, and the certificate itself is not one of the regular certificates of said Bank, but was one made for the purpose of defrauding this defendant, in that it was intended thereby to make it believe that it was a genuine certificate of the said Bank, and that at the time that the said certificate purports to have been issued by the said Bank to the said W. B. Slaughter, the said W. B. Slaughter was not the owner of any of the capital stock of the said Bank, nor was he at any time prior thereto, nor for some time thereafter, the owner of any of the capital stock of the said Bank, all of which was known to the Mercantile National Bank of Pueblo, Colorado, its agents and employees.

12 Sixteenth. Upon information and belief that the said application hereinbefore mentioned wherein a person purport-

ing to be W. B. Slaughter applied for the loan hereinbefore set forth and the note, a copy of which is hereto annexed, and the certificates of stock delivered with said note as security for the repayment of the loan therein mentioned, were delivered to this defendant by said Mercantile National Bank of Pueblo, Colorado, and by the officers thereof, with full knowledge on the part of the officers of said Bank, that the signatures thereon were not the signatures of W. B. Slaughter, and that the instrument described as certificate No. 109 of the First National Bank of Silverton, Colorado, never had any valid inception.

Seventeenth. That the said application did not bear the signature of the said W. B. Slaughter, and the said certificates of transfer purporting to be signed by W. B. Slaughter and purporting to transfer the ownership of certificates Nos. 3 and 4 of the Mercantile National Bank of Pueblo, Colorado, were not in fact signed by W. B. Slaughter, and the said certificate No. 109 purporting to be a certificate of the First National Bank of Silverton, Colorado, was in all respects forged and worthless, and knowing that this defendant would rely upon the genuineness of said papers and instruments, the same were delivered to this defendant but as the result of and in furtherance of a conspiracy between the Mercantile National Bank of Pueblo, Colorado, and its several officers, and as the result of and furtherance of a conspiracy between the several officers in charge of the Mercantile National Bank of Pueblo, Colorado, and having the management thereof in their charge, and of

13 other persons unknown to this defendant, to obtain from this defendant the said sum of Thirty thousand dollars upon securities that were worthless and some or all of them forged, or the certificate or transfer of the same whereby ownership was to be vested in this defendant, or of some of the said certificates, forged, and upon a note the signature of the principal maker of which was forged or signed by some party other than the person purporting to sign the same, and to deceive this defendant into believing that the said note bore the genuine signature of the said W. B. Slaughter.

Eighteenth. That it was in full reliance in the genuineness of all the papers and instruments hereinbefore set forth, this defendant placed to the credit of W. B. Slaughter the said sum of Thirty thousand dollars, and thereafter transferred said credit of Thirty thousand dollars to the Mercantile National Bank of Pueblo, Colorado, and this defendant upon learning of the deception so practised upon it, as hereinbefore set forth, immediately cancelled said credits.

Nineteenth. That by reason of the premises, the said sum of Thirty thousand dollars never became due to the Mercantile National Bank of Pueblo, Colorado, from this defendant, and that the said sum of Thirty thousand dollars, which the plaintiff herein claims to be due from the defendant to him is the proceeds of the transaction hereinbefore described; and this defendant pleads that it has paid to the plaintiff all sums due to him as Receiver of the Mercantile National Bank of Pueblo, Colorado, and nothing whatsoever is due to plaintiff from this defendant.

- 14 Wherefore defendant demands judgment that the complaint herein be dismissed with costs.

WESELMAN & KRAUS,
Attorneys for Defendant.

Office & P. O. Address, 55 Liberty Street, Borough of Manhattan,
New York City.

STATE OF NEW YORK,
County of New York, ss:

John A. Noble, being duly sworn, deposes and says: That he is the Cashier of the defendant herein that he has read the foregoing amended answer and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Deponent further says that the reason why this verification is made by deponent and not by defendant, is that defendant is a corporation and deponent an officer thereof.

JOHN A. NOBLE.

Sworn to before me this 21st day of April, 1916.

[SEAL.]

J. R. VALENTINE,
Notary Public, No. 40.

New York County Register No. 7083. Commission expires March 30, 1917.

15

New York, February 10, 1915.

\$30,000.00.

Sixty days, after date for value received, the undersigned promises to pay to The Harriman National Bank, of the City of New York, or order, at said Bank, Thirty Thousand 00/000 Dollars, with interest at the rate of 6 per cent. per annum, having deposited with said Bank as collateral security the following property, viz:

500 shares Mercantile Nat. Bank, Pueblo, Colo. stock.

400 shares 1st Nat. Bank, Silverton, Colo. stock.

The undersigned agrees without demand or notice from the Bank to keep a margin of collateral on this note of not less than 25 per cent., or in default thereof this note shall, at the option of the Bank, or of its President or Cashier, become due and payable forthwith without notice. The undersigned hereby authorize the Bank or its President or Cashier to sell all or any part of the collateral to this note without notice, at the New York Stock Exchange, or at public or private sale, at the option of the Bank or of its President or Cashier, in case of non-payment of this note or of the non-performance of any of the stipulations herein contained, applying the net proceeds to the payment of this note, including interest, and accounting to the undersigned for the surplus if any; and the Bank may

purchase the whole or any part of the collateral for its own account at any public sale or sale at the Exchange. In case of deficiency the undersigned promise to pay to the Bank forthwith after such sale the amount thereof with legal interest. It is agreed that if recourse

16 be had to the collateral, any excess of collateral, or of the proceeds of sale of collateral, shall be applicable to any other note or claim held by the Bank against the undersigned whether such note or claim now exist or be hereafter made or incurred, and whether at the time of such application the note or claim shall be due or not, and whether the liability of the undersigned in respect to such note or claim be absolute or dependent upon any contingency, and even though such contingency may not at that time have happened. The Bank is hereby given a lien for the payment of this note and of all other claims against the undersigned which now exist or which may hereafter arise in favor of the Bank upon all property or securities which have been or which shall hereafter be given to or left in the possession or custody of the Bank by or for the undersigned for safe keeping or for any other purpose, and also upon the balance of any account of the undersigned with said Bank, and this notwithstanding such property or securities may have been or shall be deposited as security for some special purpose. The Bank or its President or Cashier is hereby authorized at its or his option, at any time, to appropriate and apply to the payment and extinguishment of this note and of any or all of the notes, claims or liabilities herein referred to, all moneys, securities and credits now or hereafter in the hands of the Bank, on deposit or otherwise, to the credit of or belonging to the undersigned. In case of any exchange of, or addition to the collateral named in this note, the provisions of this note shall extend to such new or additional collateral.

Upon any transfer of this note the Bank may deliver the collateral or any part thereof to the transferee, who shall thereupon become vested with all power and rights above given to the 17 Bank in respect thereto, and the Bank shall thereafter be fully discharged from any responsibility concerning them. It is further agreed that in the event of insolvency of the undersigned, or on the occurrence of anything evidencing insolvency, this note and all of the said notes, claims and liabilities shall become and be immediately due and payable without notice or demand of payment.

W. B. SLAUGHTER.
C. C. SLAUGHTER.

(\$6. U. S. Documentary stamps.)

Extract from the Clerk's Minutes.

At a Stated Term of the District Court of the United States for the Southern District of New York, Held at the United States Court-rooms, in the United States Court-house and Post Office Building, in the Borough of Manhattan, City of New York, on the 31st Day of May, in the Year of Our Lord One Thousand Nine Hundred and Sixteen.

Present: Hon. William I. Grubb, District Judge.

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National Bank of Pueblo, Colorado,

vs.

THE HARRIMAN NATIONAL BANK OF NEW YORK.

Now comes the plaintiff by Barber, Watson & Gibboney, his attorneys, and Stuart G. Gibboney and Geo. M. Burditt of
18 counsel, and moves the trial of this cause. Likewise comes the defendant by Wesselman & Kraus, its attorneys, and B. L. Kraus of counsel. Thereupon a jury is duly impaneled and sworn and the cause proceeds to trial. Thereafter on Friday, June 2, 1916, at the close of the testimony on both sides, defendant's attorney moves for a direction of a verdict—denied—exception.

Plaintiff's attorney moves for a direction of a verdict for \$32,100.00.

By direction of the Court: Verdict for the plaintiff for \$32,100.00. Defendant's attorneys moves for a new trial. Decision reserved.

Thereafter on Thursday, June 29, 1916, motion for a new trial denied. See opinion on file.

An extract from the minutes.

[SEAL.]

ALEX GILCHRIST, JR., Clerk.

(10-cent U. S. Rev. Stamp cancelled.)

19 *Judgment Appealed From.*

United States District Court, Southern District of New York.

L. 14.—275.

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National Bank of Pueblo, Colorado, Plaintiff,
against

HARRIMAN NATIONAL BANK OF NEW YORK, Defendant.

The issues in this action having come on for trial at a Stated Term of this Court, held at the Post Office Building in the Borough

of Manhattan, City of New York, on the 31st day of May, 1916, before Hon. William I. Grubb, District Judge, and a Jury, and the trial having been continued on the 1st and 2nd days of June, 1916, and the Jury having rendered a verdict on the 2nd day of June, 1916, by direction of the Court, in favor of the plaintiff for the sum of Thirty-two thousand one hundred dollars (\$32,100), and the defendant having then and there moved for a new trial, and the said motion having been denied; and the plaintiff's costs having been duly taxed at \$443.53

Now, on motion of Barber, Watson & Gibboney, attorneys for the plaintiff, it is

Ordered, Adjudged and Decreed that the plaintiff Harry Seldomridge, as Receiver of the Mercantile National Bank of Pueblo, Colorado, do recover of the defendant Harriman National Bank of New York, the sum of Thirty-two thousand one hundred dollars (\$32,100) damages, as found by the Jury, together with the sum of \$171.20 interest on the verdict, and together with the sum of \$443.53 costs as taxed, amounting in all to the sum of \$32,714.73 and that the plaintiff have execution therefor accordingly.

Signed and entered this 5th day of July, 1916.

ALEX GILCHRIST, JR., *Clerk.*

Order Denying Motion for New Trial.

At a stated Term of the United States District Court for the Southern District of New York, Held at the Post Office Building in the Borough of Manhattan, City, County, State, and Southern District of New York, on the 30th day of June, 1916.

Present: Hon. William I. Grubb, Judge.

L. 14.—275.

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National Bank of Pueblo, Colorado, Plaintiff,

against

HARRIMAN NATIONAL BANK OF NEW YORK, Defendant.

This action having duly come on for trial at a Stated Term of this Court held at the Post Office Building in the Borough of Manhattan, City of New York, on the 31st day of May, 1916, and the trial having been continued on the 1st and 2nd days of June, 1916, and a verdict having been directed in favor of the plaintiff and against the defendant on the said 2nd day of June, 1916; and the defendant having moved for a new trial immediately upon the rendition of said verdict, upon the minutes taken at the trial and upon the law and upon the facts, and the said motion having duly come on for argument on the 10th day of June, 1916, before Hon. William I. Grubb, and after hearing Bertram L. Kraus of

Counsel for the defendant, in support of said motion, and George M. Burditt, of Counsel, for the plaintiff, in opposition thereto, and after due deliberation, and on the memorandum opinion filed herein upon said motion.

And on motion of Messrs. Barber, Watson & Gibboney, attorneys for the plaintiff, it is hereby

Ordered that the said motion for a new trial be and the same hereby is in all respects denied.

Enter,

W. I. GRUBB, *Judge.*

22

Petition for Writ of Error.

United States District Court for the Southern District of New York.

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National Bank of Pueblo, Colorado, Plaintiff,

against

THE HARRIMAN NATIONAL BANK OF NEW YORK, Defendant.

The Harriman National Bank, the defendant in the above entitled action, feeling itself aggrieved by the findings of the Hon. William I. Grubb, before whom the issues in this case were tried with a jury, and the order of the said Judge, dated the 30th day of June, 1916, and entered on the same day in the office of the Clerk of the United States District Court, for the Southern District of New York, denying the motion of the defendant for a new trial, and the judgment entered thereon on the 5th day of July, 1916, in the office of the Clerk of the United States District Court, for the Southern District of New York,

Come now, by Wesselman & Kraus, attorneys for The Harriman National Bank, and petition said Court for an order allowing said defendant to prosecute a writ of error to the Honorable United States Circuit Court of Appeals, for the Second Circuit, under and according to the laws of the United States, in that behalf
23 made and provided, and that a transcript of the records and proceedings and papers on which said judgment was made and entered, duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Second Circuit; and the plaintiff and the defendant having filed a bond as security on the part of the defendant upon said writ of error, that an order be made staying and suspending all proceedings of this Court until the determination of said writ of error of the Circuit Court.

Dated, New York, August 31st, 1916.

WESSELMAN & KRAUS,
Attorneys for Defendant.

Office and P. O. Address, 55 Liberty Street, Borough of Manhattan, New York City.

Assignments of Error.

United States District Court for the Southern District of New York.

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National Bank of Pueblo, Colorado, Plaintiff,

against

THE HARRIMAN NATIONAL BANK OF NEW YORK, Defendant.

Now comes the defendant, The Harriman National Bank, and files the following assignment of errors upon which it will rely upon its prosecution for a writ of error in the above entitled case. Said defendant alleges that the Court erred as follows:

First. The Court erred in refusing to dismiss the plaintiff's complaint at the end of the plaintiff's case, for the reason that plaintiff had failed to make out a prima facie case.

Second. The Court erred in receiving the testimony of W. B. Slaughter and permitting the witness to testify, over defendant's objection and exception, as follows:

"Q. Now, in paying for these cattle, did I understand you to say that your son Coney issued checks on your account with the First National Bank of Socorro, and signed your name by C. C. S."

25 Mr. Kraus: I make the same objection, as immaterial.

The Court: Objection overruled.

Mr. Kraus: Exception.

(Reading:)

"A. Yes, by C. C. S. That showed that he signed it.

"Q. And those checks were honored by your bank?

"A. Yes, by special agreement, you know. I sent him out to buy a special bunch of cattle, and he would draw on my account, and he would sign my name to the check and put his initials under it.

"Q. Then those checks were honored by your bank?

"A. Yes.

"Q. You didn't give Coney a permanent power of attorney to sign checks for you?

"A. No, I never gave any man a special form of attorney. I would just simply tell him to go out and buy a certain number of cattle, and if I couldn't go, I would tell him to draw on my account and sign the checks W. B. Slaughter by C. C. S., and not only him but other men have done that.

"Q. Were those the first checks against any bank account of yours, so far as you recall—

"A. So far as I recall. He may have signed a few before that time, but that is the first I can recall."

Third. The Court erred in receiving the testimony of W. B. Slaughter and permitting the witness to testify, over defendant's objection and exception, as follows:

"Q. Did you own an automobile?

"A. Did I?

26 "Q. Yes.

"A. No, I didn't own an automobile. My wife bought one about the time I left, is the only automobile I had.

"Q. You paid for it, didn't you?"

Mr. Kraus: How is that material?

Mr. Gibboney: I don't see that it is very material.

Mr. Burditt: It was paid by a check signed by his son, and he admits it was properly drawn against the account.

Mr. Kraus: I think it is immaterial and irrelevant and incompetent, and it has no bearing on the issues.

The Court: I will let it in.

Mr. Kraus: Exception.

Mr. Burditt (reading):

"You paid for it, didn't you?

"A. I guess she paid for it.

"Q. It was an electric automobile, wasn't it?

"A. Yes.

"Q. Don't you know that you paid for it?

"A. That I signed a check for it?

"Q. Don't you know that you paid for it out of your bank account?

"A. Certainly it was paid for.

"Q. Don't you know that it was paid for out of your bank account at the Mercantile National Bank?

"A. It must have been she had some funds there, I don't know how much, I don't remember.

"Q. Well, you don't know whether it was paid out of your account or not?

"A. Out of mine or hers.

"Q. It was purchased from the Waverly Electric Company, wasn't it?

"A. Yes.

27 "Q. And you know it was paid for by a check that was signed by C. C. Slaughter, don't you?

"A. No, sir; I didn't know that.

"Q. Well, if he did sign such a check and had not called it to your attention, you would have had it honored, wouldn't you?

"A. I don't know whether I would or not. I don't know how he came to sign C. C. Slaughter to the check.

"Q. If he had signed the check W. B. Slaughter by C. C. Slaughter, you would have had it honored?

"A. Yes, if it was all right, yes.

"Q. For that automobile?

"A. Yes."

Fourth. The Court erred in receiving the testimony of W. B. Slaughter and permitting the witness to testify, over defendant's objection and exception, to a conversation with a third party when defendant was not present, as follows:

"Q. Did you have any conversation with Mr. Grisard in which you told him, very shortly after you were elected president of the bank, that all checks drawn on your account signed by your son should be honored?"

Mr. Kraus: I object to that as immaterial and incompetent, and not binding upon this defendant, and not within the issues. Any conversations such as that could not bind us in any way.

The Court: I will overrule the objection.

Mr. Kraus: Exception.

The Court: This is only a circumstance indicating authority.

(Reading:)

"A. No, I did not. I may have told him that any of my checks with my name signed to them, by my son, a legitimate small check, to pay it and charge to my account."

Fifth. The Court erred in receiving in evidence, over defendant's objection and exception, Plaintiff's Exhibit Numbered 14, which reads as follows:

"Bankers Trust Company,
Slaughter Building,
Dallas, Texas.

November Twenty-seventh, 1913.

Mr. C. C. Slaughter, Pueblo, Colorado.

DEAR CONEY: Your letter of the 25th in regard to the Post Office matter you have had up with Mr. Bellesfield before me, and in reply to the same will say that you had better handle this matter form the Bank. It might not sound good to Senator Thomas for me to write him from here; hence the importance of you writing him from there and signing my name.

So far as buying the Government Bonds is concerned, I am of the opinion when the Currency Measure passes these bonds we have will be sold at a loss, or, in other words, they will depreciate in value, and this bond business is a matter that you had better study carefully. However, I shall leave the entire matter to your good judgment.

Would be pleased if you would send me a copy of the letter you write Senator Thomas and also Burleson, but handle it from home.

Hoping everything is coming on nicely and with kindest personal regards to each, I beg to remain, as ever,

Your Dad,

W. B. SLAUGHTER."

W. B. S./F.

Sixth. The Court erred in receiving in evidence, over defendant's objection and exception, Plaintiff's Exhibit Numbered 15, which reads as follows:

"December the Second, 1913.

Mr. W. B. Slaughter, Dallas, Texas.

MY DEAR DAD: I have your favor of the 27th and before the same reached me I had previously taken the matter up with Mr. C. E. Thomas and I am herewith handing you copy of the same, which I will ask you to return to us for our files after you have read the same, for this is the only copy we have. The thought struck me the same as you, that when we were offered this Post Office account it would require a large outlet of money for government bonds. However, we will only have to take such an amount as we would want. That is, say about \$5,000.00 of bonds and remit the balance each day. I believe this would be a good advertisement. At the same time I wrote Senator Thomas I also wrote our correspondent in Chicago and am to-day writing our New York correspondent, getting their views as to how would be the best way to handle this, or would they advise us to consider the same.

Just at this time we would hardly feel justified in making investments in Government Bonds. They are at 96 I understand this morning. I signed my own name to this former letter, but as soon as I hear, I will have Will Wheatley sign your name and write him more fully.

I have made no headway regarding our taking on the First National Bank Building for the reason I do not believe George Meston will surrender the present lease to us under any consideration and I explained to Mr. Middlekamp we would not care to make a trade with him for his bank building pending our getting away from Meston as it would cause hard feelings and we might be forced to stay here for sometime.

I also notice you have paid Charlie Williams for automobile fees which I believe is a good idea.

Trusting everything is coming along nicely with you, I am,
Your son,"

Seventh. The Court erred in receiving in evidence, over defendant's objection and exception, Plaintiff's Exhibit Numbered 16, which reads as follows:

31

"Bankers Trust Company,

Slaughter Building,

Dallas, Texas.

December the Fifth, 1913.

Mr. C. C. Slaughter, Cashier, The Mercantile National Bank, Pueblo, Colorado.

DEAR CONEY: Your letter of the 2nd with copy of letter to Senator Thomas received and contents noted.

In reply to the same will say that it is not best for me to write to Thomas from here. You can have the letters written from Pueblo and have more effect.

I notice that you are having severe snow storms in Colorado. I presume they have reached down to the Panhandle, but have not heard from there. We have had incessant rains here for the past six weeks.

I think your mother and the baby will start home next Sunday week, and I will try and get there the last of the week, if possible. I don't know just at this time where I will have to go before going to Colorado. I am likely to be called to some distant place, and if I am, I will go from there on home.

I presume our steers are in the feed lots at Elk City this morning and that I will hear from them during the day.

Hoping everything is coming along nicely, I beg to remain, as ever,

Your Dad,

W. B. SLAUGHTER.

P. S.—I herewith return you the Thomas letter.

W. B. S."

32 Eighth. The Court erred in receiving in evidence, over defendant's objection and exception, Plaintiff's Exhibit Numbered 19A, which reads as follows:

"The Mercantile National Bank of Pueblo,

United States Depository.

Pueblo, Colo, Jan. 16, 1912.

Pay to the order of W. S. Walpole \$5,000 Five Thousand no/100 Dollars.

W. B. SLAUGHTER,

C. C. SLAUGHTER,

By C. C. S.

For phone stock.

(Stamped, Paid 1/17/12.)

Stamped on face: (Counter check.)"

Endorsed: First National Bank. Paid Jan. 17, 1912. Clearings, Pueblo, Colo.

Ninth. The Court erred in receiving the testimony of W. B. Slaughter and permitting the witness to testify, over defendant's objection and exception, to a conversation with a third party had when defendant was not present, as follows:

"Q. To refresh your recollection as to the time, do you recall being in Denver and going from Denver to Pueblo with Mr. Thatcher?

"A. Yes, sir. * * *

"Q. Do you know how long ago that was?

A. I guess it was in eleven, wasn't it?

33 "Q. Mr. Thatcher says it was three or four years ago. That would make it 1911 or 1912, about?

"A. I think it was in eleven. It may have been twelve.

"Q. Now, did you on the train coming from Denver to Pueblo, talk with Mr. Thatcher about the two banks at Silverton?

"A. Yes.

"Q. Do you recall what that conversation was?"

Mr. Kraus: That is objected to as immaterial and not binding on this defendant, and as having no bearing on the issues.

The Court: I will overrule the objection.

Mr. Kraus: Exception.

"A. Yes, we talked about there not being business enough there for two banks and about consolidating them, or one buying the other out, and I told him I was perfectly willing to dispose of my interest, and whenever the time came I was perfectly willing to turn loose of my interest, or buy his. I have forgot the conversation.

"Q. Was the conversation in substance as you have related now?

"A. Yes."

Tenth. The Court erred in receiving in evidence, over defendant's objection and exception, plaintiff's exhibit numbered 20, which reads as follows:

"Jan. 10th, 1912.

Personal.

Mr. C. C. Slaughter, Cashier Mercantile National Bank, Pueblo, Colorado.

34 DEAR MR. SLAUGHTER: Your letter of the 4th instant just received, enclosing joint note made by your father Mr. W. B. Slaughter, and yourself, for \$25,000 maturing May 1st, 1912, and secured by 200 shares First National Bank, Dalhart; 70 shares, Silverton National Bank, Silverton, Colorado, and \$20,000 bills receivable, being two notes of 10,000 each, made by C. E. Oakes and Charles E. Oakes.

I note your remarks in your letter relative to this paper and concur with you in the hope that our relations entered into will be most harmonious and satisfactory, and to this end I have wired you as follows: which I hereby confirm:

'Letter Fourth and enclosures received, but not in accordance with understanding. See my letter December 27th. Neither Stratford Bank nor Mercantile Pueblo Bank stock included in collateral, nor information regarding the character, worth and standing of makers of receivables. Best to start right always, then no misunderstanding. Am writing you fully tonight. Do nothing until you receive my letter.'

We are very desirous of doing business with you, but it must be according to the terms agreed upon, and as outlined in our recent

interview and correspondence. If you will refer to my letter of December 27th, you will find that I stated we would be pleased to extend a loan of \$25,000 secured by stock of the First National Bank of Dalhart, the First National Bank of Stratford, and some of the stock of the Silverton National Bank, together with receivables to the amount of \$20,000 and that upon receipt of your note duly executed and collateral with stock and securities above mentioned we would discount same and credit the amount to the Mercantile National of Pueblo, now opening with us, with the proceeds and for your personal use.

By referring to the proposition agreed to by Mr. Jones of the Park Bank, under date of October 16th, a copy of which letter you allowed me to retain, I find that you offered two hundred and fifty shares of the First National Bank of Dalhart, and twenty-five shares of the First National Bank of Stratford, and you were also to send us information respecting the character, worth and standing of the maker or makers and endorser or endorsers of the receivables lodged as additional collateral, and which we now find to be the two notes of \$10,000 each, above described.

While we do not question the value of the stock of the Silverton National Bank, we would much prefer that the original arrangement be adhered to, and to that end we would request that you send us the additional fifty shares of First National Bank of Dalhart, which we will retain and also the twenty-five shares of the First National Bank of Stratford which you have entirely neglected to enclose; and we will also take advantage of your offer to send us stock of the Mercantile National Bank to the amount of \$10,000. This is no reflection whatever upon the security which — have now offered us, but as the matter has been accepted in this shape we would much prefer that the transaction go through as agreed.

I find, in looking over the collateral, that although we asked particularly that the bank shares you forwarded should be in negotiable form, duly signed and witnessed, I return to you Certificate No. 75 for twenty shares of First National Bank of Dalhart, in the name of W. B. Slaughter, but which has not been witnessed; also Certificate No. 29 for seventy shares of Silverton National Bank stock, in the name of W. B. Slaughter, which is endorsed and witnessed in lead pencil.

In returning these in proper shape, together with the stock of the First National Bank of Stratford and stock of the Mercantile National Bank of Pueblo, please do not forget to give me all information which you have regarding the makers of the receivables, which you have forwarded to us in conjunction with the above described collateral.

I enclose you new note for \$25,000 maturing May 1st, 1912, secured by 250 shares First National Bank of Dalhart, Texas, 25 shares First National Bank of Stratford, 70 shares of the Silverton National Bank, Silverton, Colorado, and two notes of \$10,000 each maturing January 13th, 1913, made by C. E. Oakes and Charles E. Oakes, jointly.

Upon receipt of this new note and the collateral we are enclosing

herewith, returned in proper shape and accompanied by the required collateral described, it will be our great pleasure to place the proceeds of this accommodation to you to the credit of the Mercantile National Bank of Pueblo, for the personal use of Mr. W. B. Slaughter.

Very truly yours,

J. W. HARRIMAN, *President*.

P. S.—Money upon this kind of an obligation is certainly worth 6%. Please fill in the note the number of shares of the Mercantile National Bank stock, informing us in your letter, of the book-value.

37 Eleventh. The Court erred in receiving the testimony of the witness W. B. Slaughter, and permitting him to testify, over the defendant's objection and exception, to a conversation that he had with his son Coney Slaughter during the absence of the defendant, which testimony if as follows:

"Q. Did you tell your son that if he could make the arrangements to pay for the stock it was all right to go ahead and buy it?"

Mr. Kraus: I object to that as immaterial and not binding upon this defendant, and having no bearing on the issues. It is a matter between two outside parties.

Mr. Gibboney: He said he talked with his son in El Paso in March. The Court: Overruled.

Mr. Kraus: Exception. (Reading:)

"A. I told him when I met him at El Paso, he told me he bought the bank, and I said how did you pay for it, you didn't take all my ready cash to pay for that bank, did you, and he said no, I didn't take it all, and that everything would be explained.

"Q. Did he tell you he had borrowed any money at the Harriman National Bank?

"A. No, he didn't tell me he had borrowed any money.

"Q. You didn't know he had borrowed and money?

"A. No, I didn't know about the conditions until I got up there.

"Q. Did he tell you he would have a lot of the stock issued to you?

"A. I don't remember whether he told me that or not, I don't think he did.

38 "Q. Did he tell you he would have you elected president?
"A. Yes, he told me that it was the intention to have me go in as president, and I told him I couldn't go in as president. I told him I was president of the Silverton National Bank and I was satisfied with that.

"Q. What else was said at that conversation at El Paso?

"A. As to who should run the bank?

"Q. What was that?

"A. That if I had taken the bank and put my money in the bank, the man that was in it was to run it, Mr. Werkheiser.

"Q. What date was that?

"A. I think that was the first Tuesday in March. I think that was when the convention convened there.

"Q. Who was present at that conversation?

"A. Nobody but he and I, talking, we were just sitting down.

"Q. You and your son?

"A. Yes.

"Q. Wasn't Mr. Werkheiser there?

"A. Later on, yes, he came down there and we talked things over there generally, in his presence.

"Q. He came down there with your son, didn't he?

"A. I don't think he came down there with him.

"Q. He was there during the first two or three days in March?

"A. Yes.

"Q. And talked to your son about the bank?

"A. Yes.

"Q. And did you talk to him about the management of the bank at that time?

"A. I told him that if I went into the bank I wanted him to run it, that I thought he was more competent than the man in the other bank, and had more experience.

39 "Q. At that time you knew that you were the owner of quite some shares of stock in that bank, didn't you?

"A. I didn't know what I had. I told my son that this all hinged on the conditions he would find out up there.

"Q. Did you know at that time that you were elected President?

"A. He told me I was, but I told the other man that he would probably stay in until they were consolidated.

"Q. That he would stay in until they were consolidated?

"A. Yes.

"Q. Now, did you know how much money you had in the Mercantile National Bank at that time?

"A. Yes, I know I ought to have had eighty thousand dollars there at that time.

"Q. How much?

"A. Eighty thousand dollars.

"Q. Did you ask your son how much he had in there?

"A. I don't know whether I did or not, I may have and may have not.

"Q. Did he tell you how much he had paid for the bank?

"A. No. Well, I think he told me it cost \$72,000 is my recollection.

"Q. Did he tell you how he had paid for it?

"A. No, he didn't tell me how he had paid for it.

"Q. Did he tell you that he had paid 50% or \$35,000 cash?

"A. No, he didn't. I told him when I come up there we will look over everything and if everything was all right it was all right with me."

Mr. Kraus: Your Honor will remember that these conversations took place long after this transaction. I don't see how it is material A conversation in March about a transaction that took place in February.

The Court: I will let him answer when he paid the \$35,000.

40 "Q. Did he tell you he had given Mr. Thatcher a note for \$35,000?

"A. No, he didn't tell me anything.

"Q. Did he tell you he had borrowed some money from the Harriman National Bank?

"A. No, we didn't talk over things at all. I was very busy and didn't have much time to talk things over.

"Q. Did you ask him where your stock in the Mercantile National Bank was?

"A. Did I ask him?

"Q. Yes?

"A. No, I had no occasion to ask him.

"Q. Where was it?

"A. It ought to have been in my box.

"Q. In your box?

"A. Yes, at the Mercantile National Bank at Pueblo."

Twelfth. The Court erred in receiving in evidence, over defendant's objection and exception, the letter written to W. B. Slaughter by his son, dated January 25th, 1915, marked Plaintiff's Exhibit 27, reading as follows:

"January the Twenty-fifth, 1915.

Mr. W. B. Slaughter, Dallas, Texas.

MY DEAR DAD: I am just in receipt of your favor of the 23rd and of course regret very much you have such a severe cold and trust by the time this letter reaches Dallas, you will have fully recovered.

Desire to state we have been having fine weather in Colorado.

41 In fact we drove to Colorado Springs yesterday afternoon leaving about 3:30 and got back about 7:00 in the evening. We had the open car and did not feel the cold at all. However, it is snowing this morning but not very chilly.

I have written you fully regarding the Thatcher deal but I have not at this time done anything regular in the matter. In fact at the time he was talking about the matter, he seemed to be of the opinion we should keep one of his men for a short time which I agreed to do, as he claimed it was more or less of a responsibility in transferring a bank on account of the National Banking Law. I told him we would be very glad to have him remain on the Board of Directors for six or nine months if he cared to do so. While of course, I do believe it will be to our advantage to keep one or two of their men for six or nine months until we get thoroughly familiar with the conditions.

If the two banks can be put together and made pay it seems to me it can be made a paying proposition. Furthermore, figuring his capital stock on a basis of \$1.40 would make it worth \$70,000.00 and we now have an investment up there of something like \$30,000.00 hence there would only be an outlay of something like \$35,000.00. Of course, I suppose it will take two or three weeks before we absolutely get the correct data. It is very essential that I see you and go

over the matters, but I presume I can arrange to come to the cattle convention at El Paso which I believe is along about the first of

March and we can talk matters over thoroughly; or, if I can
42 not get off, you can return by Dallas and I can meet you there.

I notice what Mr. Wright says in regard to the Oakes business and it seems to me you are on the ground and president of this bank and have full authority to act. My idea was to get hold of the stock in his store if possible. Mr. Wright knows the situation very fully and naturally we should follow his instructions. You now have the stock securing Mr. Oakes' note in your possession and I will send the note to you and you can take whatever action you desire.

Do not believe I have written you that we have been designated depository for the Southern Ute Agency. We are forced to put up a surety bond for this of \$55,000.00 with them and they are to deposit like amount with us. We will pay $3\frac{1}{2}\%$ on daily balances and time deposits. The money costs us \$5.50 a thousand. I have already furnished the bond and presume I will receive the deposit in the next few days.

I am very much surprised my mother's furniture has not begun to arrive as I paid Mr. Calkins for this some few days ago and presume it will put in appearance before this.

I notice you enclose the notification of your income tax and desire to state I will make up your income tax in accordance with the statement of last year forwarded to you immediately in order you can sign and send to the Internal Revenue collector in Texas. Last year we sent this to Mr. Skinner at Denver, but you are now a
resident of Texas and I will write Mr. Skinner to this effect.

43 I neglected to send a copy of letter I wrote to Mr. Goodell the other day. Please return this copy when it has served its purpose. Up to this time I have not communicated with Mr. Goodell regarding the Silverton National Bank, as I did not want to take the matter up until I was sure we would make a trade with Mr. Thatcher, as there is no use running head long into this agreement until we are thoroughly satisfied we are not going to get the worst of it. Do not believe there is any additional news to write.

Your son,"

Thirteenth. The Court erred in receiving in evidence, over defendant's objection and exception, the letter written to W. B. Slaughter, by his son C. C. Slaughter, dated January 22nd, 1915, marked Plaintiff's Exhibit 45, and reading as follows:

"January the Twenty-second, 1915.

Mr. W. B. Slaughter, Dallas, Texas.

DEAR DAD: I am in receipt of your favor of the 20th and note what you say with reference to the Silverton Bank. However, I had hoped you would arrange to come up here and go over the matter. I took the matter up with Mr. Thatcher this A. M. and had a very

pleasant visit and while we did not come to any terms for he had no substantial evidence as to the conditions his bank was in,
44 but assured me it was good and that he would have some evidence in the course of the next few days and would advise me.

In order I could take the matter up intelligently with Mr. Thatcher, I herewith enclose a letter which I showed him which is supposed to be from yourself. Of course, if you do not approve of this letter and the contents, you had better wire me as I have already shown Mr. Thatcher the letter. In all probabilities we will be forced to pay \$140.00 for this stock but we did not get that far along with the exception he did agree we would pay one-half cash and the balance October 15th, he holding stock to the par value.

Please put the carbon of this letter in your files in order you will know what I said to him if the occasion ever arises. Of course, I have no idea of making a deal unless he absolutely agrees to only have one bank in Silverton. Of course, it is possible that another bank might start there but I hardly believe so at this time.

I ordered a Federal Reserve Manual sent you at the cost of \$5.00 to ourselves, which I presume you have received ere this and I am herewith enclosing check for \$5.00 to them, together with the bill and if you like the manual and think it will be of service to you you can send the check to them together with the bill, otherwise return the manual to them and the check to us.

Am also enclosing a letter which I received from Mr. Smith, which, after you have read and answered, please return to me. This makes me hesitate about Smith and I believe if we do not
45 close the deal at Silverton, we will put someone up there to relieve him in a short time, as it seems all the men we have want to borrow some money from us, which I do not think looks good.

I wrote to Mr. Smith in all probabilities you could come up as I thought you would and I wanted to have him prepared. Of course, he knows nothing of our figuring on buying the other bank and I do not want him to know until the deal is closed. Please return his letter to me as soon as it has served its purpose. With love to all, I remain,

Your son,"

Fourteenth. The Court erred in receiving in evidence, over defendant's objection and exception, the letter written to W. B. Slaughter by his son C. C. Slaughter, dated February 3rd, marked Plaintiff's Exhibit 46, and reading as follows:

"February the Third, 1915.

Mr. W. B. Slaughter, Dallas, Texas.

DEAR DAD: I am in receipt in this morning's mail of the Prospectus of the Bankers Trust Company and believe it is a good advertisement and you are to be congratulated on getting out such an

attractive folder, but I must confess I do not believe that the picture of yourself and others are as good as they might have been.

46 I wish you would send me a half a dozen of these in order I can distribute them to some people that I think I can possibly sell some stock to a little later on.

I have not closed the deal with Mr. Thatcher up to this time as I am not thoroughly convinced the bonds are worth the value he is carrying them on his books. While I can appreciate that during the present money stringency these bonds are off a little to what they could be and of course a few points would not be any great difference at this writing, but he has some Great Northern Railway bonds at 5 which I do not believe are very good and I question very seriously if they could be sold at 50 cents. I am very much impressed with the method they keep the bank in.

I tried very hard to get in touch with Mr. Smith last Friday in order to come to Pueblo and go over the matter. I have given Mr. Thatcher my assurance I would not say anything to any of our employees about it, but I did have his permission to have one of them come to Pueblo if I would not disclose my mission. To my surprise I could not locate Mr. Smith at Silverton and nobody seemed to know where I could get him. Last night I got him at Durango. He stated he had been feeling badly and had been down to some wells taking the baths and had been away from Silverton about a week, but he had got snow-bound or something like that and I asked him to come to Pueblo and he did not feel disposed to do so.

I am thoroughly disgusted with the manner in which he is doing business and you cannot depend on him for anything. You gave him positive instructions at Dallas that under no circumstances should he leave Silverton without first advising us,

47 but it seems he does not do what he is asked to do and disregards instructions altogether. I would hardly want him to try to run this large bank with all its assets if this is the manner of doing business.

With reference to his \$1,000.00 note I told him I would see you at the cattle convention and we would go over the matter and come to some understanding. I herewith enclose copy of letter I have written him today, as I think it is very essential we make this 30-cent assessment in order to get out about \$7,000.00 bills receivable which I believe are bad. Among them is the Jackson paper. Mr. Smith furnished a list sometime ago which I misplaced and I am asking him in my letter to send me a list of the notes we should take out of the bank and presume he will do so.

I would state I have made arrangements with the Harriman National Bank for them to assist us in carrying this deal of the First National Bank through if we consummate it, or at least until I get opportunity to make the deal according to my own ideas. I believe I hold one of the notes signed by you to the Harriman National Bank, hence I will not send it to you but send it direct to them. It will be for \$30,000 if they should ask you how much or anything about it.

I also have your favor of February 1st and note what the James-

Michkle-Schow Company say and furthermore desire to state I sent you the note in accordance with your wishes and as I stated I do not believe you will find Mr. Oakes owns any stock in the
 48 Company in his name, but of course if the suit will accomplish what your letter states, that is, it will give us jurisdiction on the stock up as collateral, I do not see any reason why we should not do as you suggest, but you sometimes sue people in order to get a judgment and then that is the end of it and we never get anything out of the suit. Believe I have about covered all the points necessary.

Your son,"

Fifteenth. The Court erred in receiving in evidence, over defendant's objection and exception, the letter written to W. B. Slaughter by his son C. C. Slaughter, dated February 7th, 1915, marked Plaintiff's Exhibit 47, and reading as follows:

"February the Seventh, 1915.

Mr. W. B. Slaughter, Dallas, Texas.

MY DEAR DAD: I presume it will be of interest to you to know we have closed the deal with Mr. M. D. Thatcher for the First National Bank of Silverton, paying \$70,000.00 for the same, along lines I have heretofore written you. I am today writing the Comptroller of the Currency, copy of letter enclosed herein, in order you will know what I have written and you had better keep all of this correspondence separate in order you can verify same if necessary.

Mr. Thatcher went to California Saturday night, hence
 49 it was imperative that we close or let the matter rest until he returns. Mr. Goodell was in the bank yesterday morning and we had quite a long talk. While he was hardly in favor of our buying for he felt possibly the town would remain about as it is and he finally agreed it was to our best interest to either sell or buy. I desire to state we have not been able to get into communication with Silverton since Thursday, as there was a very heavy snow storm and there has been snow slides and it is completely shut off. In fact, the railroad will not sell tickets any further than Durango.

Mr. Thatcher advised them yesterday we had bought their interest, etc. Of course, I have not told Smith or anyone up to this time, that we have made the purchase and will not do so until everything is arranged as I thought we would have someone go over and make the necessary arrangements after we received the necessary instructions from the Comptroller. I have agreed with Mr. Thatcher we will keep all the present employees for 30 days, as it will require at least that time to get the consent of the Comptroller and get the two banks into consolidation. My idea is that we will liquidate the Silverton National for the purpose of going into consolidation with the First National.

I am also writing Mr. Werkheiser the Cashier of the First National Bank, as per the enclosed copy, as he will be the cashier for

the next 30 days. Hence, if you care to write him, do so. I have had you elected President of the bank and myself Vice-president, as I find I do not have sufficient authority with these banks
 50 unless I have an official position. You will also be a director as well as myself, and presume we will have to get some of the citizens for the directors. Think you had better write Mr. Cunningham at Silverton regarding the deal, asking for suggestions, etc.

I believe I told you I asked Mr. Smith to come to Pueblo but for some reason he did not feel disposed to do so. I do not know whether he has returned to Silverton yet or not for the night I telephone him was the night they had a very heavy snow slide on the railroad.

Will send you a complete statement of the loans, etc. on Monday.

Your son,"

Sixteenth. The Court erred in receiving the testimony of the witness John H. Werkheiser and permitting him to testify, over defendant's objection and exception, to a conversation had with a third party while the defendant was absent, and after the transaction with the defendant had been consummated, as follows:

"Q. Now, who did you meet at El Paso, Texas?

"A. C. C. Slaughter and W. B. Slaughter.

"Q. And did you have a conversation there on either March 2nd or 3rd with either C. C. Slaughter or W. B. Slaughter?

"A. I did.

"Q. Will you, so far as you can recollect, give in full the substance of that conversation, stating by whom the different things were said?"

Mr. Kraus: That is objected to as incompetent and immaterial; too remote from the transaction, and too long after it took
 51 place, and not binding upon the defendant.

The Court: Overruled.

Mr. Kraus: Exception.

Mr. Burditt (reading):

"A. As near as I can recall our conversation at the Paso Del Norte—in the lobby of the Paso Del Norte hotel—was in regard to the affairs of the bank, and that a consolidation was to be made, and the capital stock was in question, as to whether it would be advisable to increase the capital stock of the First National after the consolidation or not; Mr. W. B. Slaughter said he wasn't fully in sympathy with it. I think he said 'Cony here thinks you ought to increase the capital to give more prestige to the bank, and you could probably use it.' And I said my opinion was that an increase in the capital stock was not necessary, there wouldn't be any advantage or any profit in increasing the capital stock. * * *

"Q. Was there anything in the conversation as to W. B. Slaughter's ownership of the stock of the bank?

"A. Why, it was understood by all of us that they were owners.

"Q. What was said, Mr. Werkheiser?

"A. I don't know as I can just recall.

"Q. Was anything said by Mr. W. B. Slaughter as to his having invested money in the bank?

"A. Yes, I think that was——

"Q. What was it?

"A. That he had bought; he and C. C. Slaughter owned the bank, controlled it, and it was that understanding, it seems to me.

Mr. Kraus: I move to strike out 'and it was that understanding, it seems to me.'

Mr. Gibboney: We consent.

52 Mr. Kraus: Strike out the answer that he had bought; he and C. C. Slaughter owned the bank, and 'it was that understanding, it seems to me.' When he says that understanding, he means all of this that you have read.

Mr. Gibboney: I will consent that that understanding be stricken out.

Mr. Kraus: No, I ask that the whole paragraph be stricken out.

Mr. Burditt: The question before was, 'Was anything said by Mr. W. B. Slaughter as to his having invested money in the bank?'

"A. Yes.

"Q. What was it?"

The Court: I will let it stay in.

Mr. Kraus: I take an exception.

The Court: Yes.

Mr. Burditt (reading):

"Q. Who asked you to remain in the bank as cashier?

"A. Mr. W. B. Slaughter and C. C. Slaughter, both. * * *

"Q. Did he tell you that you could take up different matters that came along with C. C. Slaughter?

"A. He did.

"Q. W. B. Slaughter told you that?

"A. Yes, sir."

Seventeenth. The Court erred in refusing to dismiss the plaintiff's complaint at the close of the entire case for the reason that plaintiff had failed to make out a prima facie case.

Eighteenth. The Court erred in taking the case away from the jury and directing a verdict for the plaintiff.

Nineteenth. The Court erred in refusing to direct a verdict for the defendant.

53 Twentieth. The Court erred in denying defendant's motion for a new trial upon the law and upon the facts.

Twenty-first. That upon the law and upon the facts the Court should have directed a verdict for the defendant in that there was no evidence offered by the plaintiff to substantiate a verdict for the plaintiff.

Twenty-second. That the Court erred in directing a verdict for

the plaintiff and in refusing to direct a verdict for the defendant in that defendant was entitled to the direction of a verdict as a matter of law upon the evidence offered at the trial herein.

Twenty-third. The Court erred in finding that the Mercantile National Bank of Pueblo, Colorado, had nothing to do in the procurement of the loan from the defendant upon false and forged signatures and fictitious collateral.

Twenty-fourth. The Court erred in finding that the Mercantile National Bank of Pueblo, Colorado, was not a participant in the fraud practiced on the defendant.

Twenty-fifth. The Court erred in finding that the Mercantile National Bank of Pueblo, Colorado, did not benefit from the transaction between William B. Slaughter, Coney C. Slaughter and the defendant, whereby the defendant was induced to loan the sum of Thirty thousand dollars upon false and forged signatures and upon fictitious and forged collateral.

54 Twenty-sixth. The Court erred in finding that C. C. Slaughter had authority from W. B. Slaughter to direct the transfer of the said sum of Thirty thousand dollars, agreed to be loaned to William B. Slaughter by the defendant, to the credit of the Mercantile National Bank of Pueblo, Colorado.

Twenty-seventh. The Court erred in finding that C. C. Slaughter had authority from W. B. Slaughter to negotiate from the defendant for said W. B. Slaughter, the loan of Thirty thousand dollars aforesaid.

Twenty-eighth. The Court erred in finding that the knowledge of the Cashier of the Mercantile National Bank of Pueblo, Colorado, and the knowledge of the President of said bank, as to the fraudulent nature of the transaction with The Harriman National Bank, was not the knowledge of the Mercantile National Bank of Pueblo, Colorado, and that such knowledge did not serve as notice of the fraud practiced, to the Mercantile National Bank of Pueblo, Colorado.

Twenty-ninth. The Court erred in finding that in the negotiation or consummation, or both, of the transaction between the Mercantile National Bank of Pueblo, Colorado, and The Harriman National Bank of New York, the interest of C. C. Slaughter, was adverse to that of the Mercantile National Bank of Pueblo, Colorado.

Thirtieth. The Court erred in finding that it should be assumed that C. C. Slaughter kept the knowledge of the fraud to himself because to disclose it would subject him to criminal responsibility.

55 Thirty-first. The Court erred in not finding that the Mercantile National Bank of Pueblo, Colorado, applied the proceeds of the loan of Thirty thousand dollars, made by the defendant to W. B. Slaughter, to the payment of the pre-existing debt.

Thirty-second. The Court erred in finding that the Mercantile National Bank of Pueblo, Colorado, paid W. B. Slaughter's check of Thirty-five thousand dollars drawn on it on the faith of the transfer of the Thirty thousand dollars on deposit to the credit of W. B. Slaughter at the Harriman National Bank, to it.

Thirty-third. The Court erred in finding that the Mercantile National Bank of Pueblo, Colorado, was in no better position financially after the transaction than before, and that it received no financial benefits from the transaction.

Thirty-fourth. The Court erred in finding that the Mercantile National Bank ought not to be charged with the knowledge of its cashier of the fraud practiced on the defendant.

Thirty-fifth. The Court erred in finding that the Mercantile National Bank of Pueblo, Colorado, would not have parted with its money as it did in honoring the check of W. B. Slaughter for Thirty-five thousand dollars, had there been disclosed to it the fraud practiced on The Harriman National Bank, and further erred in finding that there is a presumption that not having disclosed the fraud then, he would not thereafter have disclosed it.

56 Thirty-sixth. The Court erred in finding that actual disclosure of the fraud committed by C. C. Slaughter on the defendant, was necessary in order to charge the Mercantile National Bank of Pueblo, Colorado, of which he was Cashier, with notice thereof.

Wherefore, The Harriman National Bank, plaintiff-in-error (defendant below) prays that the judgment of the District Court of the United States, for the Southern District of New York be reversed, and judgment directed for the defendant herein, or that the District Court be directed to grant a new trial in the said cause.

WESSELMAN & KRAUS,

Attorneys for Plaintiff-in-Error

(Defendant in Lower Court).

55 Liberty Street, Borough of Manhattan, City of New York.

57

Order Allowing Writ of Error.

At a Stated Term, to Wit, a Term of the United States District Court for the Southern District of New York, Held in the Court-room, Post Office Building, in the Borough of Manhattan, City and State of New York, on the 31st Day of August, 1916.

Present: Hon. Augustus N. Hand, District Judge.

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National Bank of Pueblo, Colorado, Plaintiff,

against

THE HARRIMAN NATIONAL BANK OF NEW YORK, Defendant.

Upon motion of Wesselman & Kraus, Esqs., attorneys for the defendant The Harriman National Bank, and upon reading and filing the petition for a writ of error, and the assignment of errors, and the undertaking filed herein, it is

Ordered, that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals, for the Second

Circuit, the judgment heretofore entered herein, and the defendant having given sufficient security, all proceedings herein are hereby stayed until the coming down of the mandate of said United States Circuit Court of Appeals, for the Second Circuit.

AUGUSTUS N. HAND,
United States District Judge.

58

Writ of Error.

UNITED STATES OF AMERICA, *ss.:*

The President of the United States of America to the Judges of the District Court of the United States for the Southern District of New York, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea, which is in the District Court before you or some of you, between Harry H. Seldomridge, as Receiver of the Mercantile National Bank of Pueblo, Colorado, plaintiff, and The Harriman National Bank of New York, Defendant, manifest error hath happened to the great damage of the defendant The Harriman National Bank of New York, as is said and appears by its complaint, we being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the aforesaid party in *its* behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the judges of the United States Circuit Court of Appeals, for the Second Circuit, at the City of New York, together with this writ, so that you have the same at the said place before the Judges aforesaid, on the 29th day of September, 1916, that the record and proceedings aforesaid being inspected, the said Judges of the United States Circuit Court of Appeals

for the Second Circuit may cause further to be done therein to correct that error, what of right and according to law and custom of the United States ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States this 31st day of August, in the year of our Lord, one thousand nine hundred and sixteen, and the independence of the United States, the One hundred and forty-first.

[SEAL.]

ALEX. GILCHRIST, JR.,
Clerk of the United States District Court, United States of America, Southern District of New York, Second Circuit.

The foregoing writ is hereby allowed.

AUGUSTUS N. HAND,
United States District Judge.

Citation.

By the Hon. Augustus N. Hand, one of the Judges of the District Court of the United States, for the Southern District of

New York, Second Circuit, to Harry A. Seldomridge, Receiver of the Mercantile National Bank of Pueblo, Colorado, plaintiff, and Barber, Watson & Gibboney, his attorneys, Greeting:

60 You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Second Circuit, to be holden in the Borough of Manhattan, City of New York, in the District and Circuit above named, on the 29th day of September, 1916, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States, for the Southern District of New York, wherein the Harriman National Bank is plaintiff in error, and you are the defendant in error, to show cause, if any there be, why the judgment and said writ of error should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, City of New York, in the District and Circuit above named, this 31st day of August, in the year of our Lord, One thousand, nine hundred and sixteen, and the independence of the United States, the One hundred and forty-first.

AUGUSTUS N. HAND,

*Judge of the District Court of the United States,
Southern District of New York, Second Circuit.*

61

Order Fixing Bond.

At a Stated Term of the District Court of the United States, Held in and for the Southern District of New York, Second Circuit, at the Post Office Building, in the Borough of Manhattan, City and County of New York, this 31st Day of August, 1916.

Present: Hon. Augustus N. Hand, Judge.

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National Bank of Pueblo, Colorado, Plaintiff,
against

THE HARRIMAN NATIONAL BANK OF NEW YORK, Defendant.

Upon reading and filing the consent of the attorneys for the plaintiff herein, it is

Ordered that the amount of the bond to be filed by the defendant herein as security for damages and costs that the defendant may be called to answer for, which bond is given as a condition to obtaining a stay of proceedings, be and the same hereby is fixed at the sum of Thirty-five thousand dollars (\$35,000).

AUGUSTUS N. HAND,

U. S. D. J.

We hereby consent to the entry of the foregoing order.

BARBER, WATSON & GIBBONEY,

Attorneys for Plaintiff.

WESSELMAN & KRAUS,

Attorneys for Defendant.

62

Bond.

District Court of the United States of America for the Southern District of New York in the Second Circuit.

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National Bank of Pueblo, Colorado, Plaintiff,

against

THE HARRIMAN NATIONAL BANK OF NEW YORK, Defendant.

Bond for Damages and Costs.

Know all men by these presents: That we Harriman National Bank of New York, of No. 527 Fifth Avenue, New York, N. Y., as Principal, and the United States Fidelity and Guaranty Company, having an office and usual place of business at No. 47 Cedar Street, in the City of New York, County and State of New York, as Surety, are held and firmly bound unto the above named Harry H. Seldomridge, as Receiver of The Mercantile National Bank of Pueblo, Colorado, in the sum of Thirty-five thousand (\$35,000) dollars, to be paid to the said Harry H. Seldomridge, as Receiver, etc., for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 13th day of July, 1916.

63 Whereas, the above named Harriman National Bank of New York, has prosecuted a writ of error to the United States Circuit Court of Appeals for the Second Circuit, to reverse the judgment dated the 5th day of July, 1916, rendered in the above entitled suit, in the District Court of the United States for the Southern District of New York, for the sum of Thirty-two thousand, seven hundred and fourteen and 73/100 (\$32,714.73) Dollars.

Now, therefore, the condition of this obligation is such, that if the above named Harriman National Bank of New York shall prosecute its writ to effect, and answer all damages and costs if it fails to make its plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.]

HARRIMAN NATIONAL BANK OF
NEW YORK.

JOHN A. NOBLE, *Cashier.* [L. S.]

FRED PHILIPS, *Vice Pres.* [L. S.]

[SEAL.]

UNITED STATES FIDELITY AND
GUARANTY COMPANY,

By S. FRANK HEDGES,

Attorney-in-Fact.

Attest:

ADOLPHUS A. JACKSON,

Attorney-in-Fact.

64 STATE OF NEW YORK,
County of New York, ss:

On this 13th day of July, 1916, before me personally came S. Frank Hedges known to me to be the Attorney-in-fact of the United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of Harriman National Bank of New York, as surety thereon, who being by me duly sworn, deposes and says, that he resides in the City of New York, State of New York, and that he is the Attorney-in-fact of the said United States Fidelity and Guaranty Company; and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of Maryland; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Harriman National Bank of New York is the corporate seal of the said United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by like order and authority as Attorney-in-fact of said company; and that he is acquainted with Adolphus A. Jackson, and knows him to be the Attorney-in-fact of said Company; and that the signature of said Adolphus A. Jackson subscribed to said bond is in the genuine handwriting of said Adolphus A. Jackson, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unincumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two million dollars (\$2,000,000.00).

S. FRANK HEDGES.

Sworn to, acknowledged before me, and subscribed in my presence this 13th day of July, 1916.

ALBERT J. ROWLANDS,
Notary Public, New York County, No.
148; *Register's No.* 8014.

Certificates filed in Kings County No. 43, Register's No. 8001; Bronx County No. 8, Register's No. 808, Queens County No. 659, Richmond, Westchester, Nassau, Putnam, Orange and Suffolk Counties. Term expires March 30, 1918.

CITY, COUNTY AND STATE OF NEW YORK, ss:

On this 13th day of July, 1916, before me personally appeared John A. Noble and Frederick Philips, respectively to me known, who being by me duly sworn, did depose and say that he, the said John A. Noble, resides in the City of New York and is Cashier of The Har-

riman National Bank of New York; and that he, the said Frederick Philips, resides in New York City, and is Vice-President of The Harriman National Bank of New York, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal thereunto affixed is such corporate seal; that it was so affixed by order of the Board of Directors, and that they signed their names thereto by like order.

HARRY LÉSSER,

*Notary Public, Bronx County, No. 10; Bronx
Register's No. 826; New York County,
No. 132; New York Register's No. 8142.*

Term expires March 30, 1913.

66 *Decision Overruling Motion for a New Trial.*

United States District Court, Southern District of New York.

SELDOMRIDGE, Receiver,

vs.

HARRIMAN NATIONAL BANK.

Memo.

The direction of a verdict for the plaintiff is asserted by the motion to have been erroneous because in conflict with two principles:

I. That where a principal received a benefit from the fraudulent act of his agent, he will be held to have accepted the benefit subject to the burden of the fraud and to the infirmity caused by it.

It is said that the Mercantile National Bank could only receive the benefit of the transfer of the proceeds of the loan subject to the right of the Harriman National Bank as against the borrower to rescind the loan agreement and appropriate the proceeds of it, since the transfer was accomplished for the bank by C. C. Slaughter, its cashier, who perpetrated the fraud upon the Harriman National Bank when the loan was secured by him for his father, W. B. Slaughter.

If the only claim the Mercantile Bank had to the money transferred arose out of the transfer, the principle might be applied. A gratuitous transfer could only have been retained by the Mercantile Bank, by its assumption of the burden accompanying it.

If the Mercantile Bank had received the proceeds of the loan on deposit for W. B. Slaughter and then had applied them to a pre-existing debt due the bank from Slaughter disconnected from the transaction by which the bank secured the deposit, the principle would also apply.

In the instant case the Mercantile Bank paid W. B. Slaughter's check for \$35,000 drawn on it, on the faith of the transfer of the \$30,000 on deposit to the credit of W. B. Slaughter at the Harriman

National Bank, to it, and the subsequent transfer made of that sum to its credit from the account of W. B. Slaughter by the Harriman National Bank did no more than reimburse it for the amount it paid out on W. B. Slaughter's check, upon the faith of receiving that amount, due Slaughter by the Harriman National Bank by the transfer thereof to it. It was in no better position because of and after the transaction than it was before. It received no benefit from the transaction as a whole. It received back only what it had already paid out in the same transaction, and was left in the identical financial condition at its close. The principle does not apply to the facts of this case for this reason.

II. The second principle asserted to be in conflict with the direction, is that notice to a principal is implied from knowledge of an agent except where the interest of the agent is adverse to that of the principal in the transaction in which he acquired notice. It is contended that there was no such adverse interest in
68 Slaughter as against the Mercantile Bank as to bring this case within the exception.

The fraud occurred only in the negotiation of the original loan. To that transaction, the Mercantile Bank was not a party. Slaughter and the Harriman National Bank alone were parties to it. That the Mercantile Bank was not affected with notice of Slaughter's fraud in securing the loan is patent. If Slaughter had drawn the proceeds out of the Harriman Bank and deposited them with the Mercantile Bank, and then drawn out of the latter and paid them to Thatcher, no possible liability could have rested on the Mercantile Bank, out of the transaction. The knowledge of Slaughter of the fraud was acquired in doing business not connected with the Mercantile Bank was not chargeable to it. The fact that Slaughter caused the fund to be transferred to the credit of the Mercantile Bank does not change the situation. He had authority from his father to make the transfer, if necessary to pay Thatcher for the stock purchased from him. In making the transfer to the Mercantile Bank, there was no fraud, and no transaction that Slaughter handled for the Mercantile Bank would have given him knowledge of any fraud in procuring the loan. The Mercantile Bank ought not to be charged with the knowledge of its cashier of a fraud, which was accomplished in a transaction in which the bank had no part, through its cashier or at all and of which its cashier could have acquired no knowledge so far as his duties as cashier went.

At the time the \$35,000 check of W. B. Slaughter was presented to the Mercantile Bank for payment by C. C. Slaughter, his
69 interest to conceal his fraud in securing the loan from the Harriman Bank was obvious, for the check would not have been cashed, if disclosure had been made to the bank of it. His interest and that of the Mercantile Bank may have been identical in procuring the subsequent transfer to it of the proceeds of the loan, but the time as of which his adverse interest is to be determined is the time when the bank parted with the money, which it would not have done had disclosure been made to it by Slaughter

of the fraud. That was the date of the payment by it of W. B. Slaughter's check. C. C. Slaughter having concealed the fraud at that time, there would be a presumption that he would not thereafter disclose it to the bank, even if disclosure thereafter could have benefited the bank, which, of course, it could not have done.

For these reasons, I do not think the principles relied upon show that the direction was erroneous, and the motion is overruled.

W. I. GRUBB, *D. J.*

70

Bill of Exceptions.

United States District Court, Southern District of New York.

HARRY H. SELDOMRIDGE, Plaintiff,

VS.

HARRIMAN NATIONAL BANK, Defendant.

Be it remembered that this cause came on for trial before Hon. William I. Grubb, District Judge, on the 31st day of May, 1916, at the Post Office Building in the Borough of Manhattan, City of New York. The following counsel were present:

Barber, Watson & Gibboney, attorneys for plaintiff; Stuart G. Gibboney, George M. Burditt, of Counsel.

Wesselman & Kraus, attorneys for defendant; Bertram L. Kraus, of Counsel.

Thereupon the following proceedings were had, to wit: A jury was duly impanelled and sworn. Mr. Gibboney, on behalf of the plaintiff, made an opening statement to the Court. Mr. Kraus, on behalf of the defendant, made an opening statement to the Court.

Mr. Gibboney: I offer in evidence a certified copy of the appointment of Francis A. Chapman, as receiver of the Mercantile National Bank of Pueblo, Colorado.

71 Marked Plaintiff's Exhibit 1.

Mr. Gibboney: I next offer in evidence a certified copy of the appointment of Harry H. Seldomridge, as receiver of the Mercantile National Bank of Pueblo, Colorado, to take effect June 16, 1915, the present plaintiff in this action.

Marked Plaintiff's Exhibit 2.

It is conceded that Mr. Seldomridge took possession of the assets of the bank and was duly qualified as receiver.

JOHN A. NOBLE, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination.

By Mr. Gibboney:

I am the cashier of the Harriman National Bank, and have been since 1908. The Mercantile National Bank of Pueblo, Colorado, was a depositor in the Harriman National Bank prior to its receivership. The account was opened about January of 1912, and the balance to the credit of the Mercantile National Bank at the close of business, March 25, 1915, was \$53,276.86. Withdrawals, according to the books of our bank were made on March 26, 1915 of \$30,000, \$7.35, \$2,118.04, and \$4.61. The debit charges against the account for that day were \$30,000, \$7.35, \$2,118.04 and \$4.61.

Q. I want to ask you, Mr. Noble, what order- or instructions of any kind were ever received from the Mercantile National Bank directing the withdrawal of the \$30,000 item to which you have referred?

A. That \$30,000 was placed in that account in error. Of
72 this special \$30,000 I don't remember receiving anything, any order from them.

I know of no instructions or orders ever received from the Mercantile National Bank directing the withdrawal of the \$30,000. No part of the \$30,000 which I have transferred or debited there have ever been paid to the Mercantile National Bank or its receiver.

Cross-examination.

By Mr. Kraus:

The \$30,000 was withdrawn. I will have to explain it in my own way, giving you the full transaction:

On the 11th day of February, 1915, \$30,000 was placed to the credit of W. B. Slaughter. Some days after we received instructions from the Mercantile National Bank of Pueblo to place this \$30,000 to their credit. They instructed me to take the money that I had placed to W. B. Slaughter's credit and place it to their credit. After that I placed it to their credit. On the 11th we placed to the credit of W. B. Slaughter \$30,000.

Q. Was it in pursuance of this telegram that you received (handing telegram to witness)?

A. No, I was mentioning the fact that we had placed the money to Slaughter's credit first and then some days later on receipt of this telegram took it out of Slaughter's account and placed it to the credit of the Mercantile National Bank of Pueblo, and then not receiving advice—

Mr. Kraus: I offer the telegram in evidence.

Marked Defendant's Exhibit A, and read to the jury.

73 The Witness: After I received the telegram marked Defendant's Exhibit A I transferred the \$30,000 from the

personal account of W. B. Slaughter to the Mercantile National Bank of Pueblo, and then on the same date I wrote this letter.

Mr. Kraus: I offer it in evidence.

Marked Defendant's Exhibit B, and read to the jury.

The Witness: After I sent that letter to Mr. W. B. Slaughter I did not receive any reply from him confirming the telegram which I had previously received. I did not receive any communications from W. B. Slaughter instructing me to transfer his funds to the Mercantile National Bank of Pueblo.

Q. Did you up to the month of April, 1915, receive any letter or telegram or other advice of any kind from W. B. Slaughter?

A. We received some later from W. B. Slaughter. I think it was in April. Thereafter I received this advice from W. B. Slaughter in reference to that \$30,000 transaction.

Marked Defendant's Exhibit C, and read to the jury.

The Witness: The note mentioned in this letter marked Defendant's Exhibit C is the note that was given to borrow the \$30,000 I told you about. That is the only letter we ever received from this man up to that time. After our bank, through Mr. Clark, wrote this letter just marked in evidence, Defendant's Exhibit B, in which I asked for the confirmation of the transfer, we waited a reasonable amount of time, and not having received the con-

74 firmation from W. B. Slaughter we transferred the \$30,000 from the Mercantile National Bank account to our sundry account. We never paid that \$30,000 out to Mr. Slaughter or to the Mercantile National Bank. There never was any actual passing of that \$30,000 from our bank to any one else. At the close of business, March 26th, the balance of the Mercantile National Bank of Pueblo was \$22,961.37. That was eventually, together with other money we received later, paid over to the receivers for the Mercantile National Bank of Pueblo. The account of the Mercantile National Bank was finally closed April 5, 1915. The amount was \$36,034.86. We sent a check to the receiver. No money remained in our bank to the credit of the Mercantile National Bank after that.

Redirect examination.

By Mr. Gibboney:

This telegram, dated February 17, 1915, was sent by the Harriman National Bank on or about that date.

Mr. Gibboney: I offer that telegram in evidence.

Marked Plaintiff's Exhibit 3.

As a matter of fact, on the 17th day of February, 1915, the account of the Mercantile National Bank appeared to be overdrawn \$8,000. The credit balance of the Mercantile at the close of business on February 18th, 1915, was \$23,130.31, February 19th, \$23,441.16, and the close of business on the 20th, \$18,647.07. The

close of business on the 23rd, \$69,147.35. This is February 23, 1915.

75 Q. Calling your attention to your answer, Mr. Noble, that none of the money, none of the \$30,000 so deposited was paid out to any one, I will ask you if you do not want to change your testimony in that regard?

A. No.

Q. Does it not appear as a matter of fact that that \$30,000 was partly paid out on February 17th to cover an over-draft?

A. No, we paid the over-draft.

Q. You paid the over-draft and credited the \$30,000?

A. The \$30,000 was not there. We paid it anyway.

Q. And for five or six days thereafter you carried along on the books of the bank a balance of less than \$30,000, did you not, as you testified to?

A. Those are the figures I gave you according to the books.

Q. You did not keep an incorrect balance?

A. No. We considered a part of the balance as held, \$30,000.

Q. Do you mean to tell me, Mr. Noble, that in addition to the balance you have given me you had \$30,000 more held there all that time?

A. No, sir.

Q. Then as a matter of fact part of the \$30,000 had been used up, had it not, to pay these over-drafts that carried this account?

A. It might appear so according to these books. As a matter of fact we paid an over-draft on the account.

The Court: The books show that. As I understand it, on the 17th day of February, \$8,000 was overdrawn. That was before the application of the \$30,000?

Mr. Gibboney: Yes.

A letter, of which the exhibit shown me is a copy, was received by the Harriman National Bank.

76 Mr. Gibboney: Counsel produces a letter which he says is the original.

The Witness: I recall it.

Q. The letter just read in evidence marked Plaintiff's Exhibit 4, Mr. Noble, was an answer, was it not, to Defendant's Exhibit B which I show you (handing paper to witness)?

A. It was not an answer, just personally to W. B. Slaughter. We never received an answer to this. It is not an answer to this letter.

W. B. Slaughter did not reply to this letter, except the letter that is now in evidence, because the letter that is now in evidence says that he never authorized the letter. W. B. Slaughter never answered that letter until in June. I do recall the receipt of the letter a few days thereafter of C. C. Slaughter acknowledging the receipt of my letter of February 18th, the bank acknowledged receipt of the individual letter. This letter, marked Plaintiff's Exhibit 4, refers to the letter of the Harriman National Bank, dated February 18th,

Exhibit 8, and purports on its face to be an answer to it, but it is not an answer.

Q. Did your bank after the receipt of this letter, dated February 22, marked Plaintiff's Exhibit 4, ever ask W. B. Slaughter, C. C. Slaughter, or the Mercantile National Bank to confirm this transaction prior to the receivership?

A. This is the letter in which we asked them to confirm the action. This is the only letter that was received in regard to the matter. After the receipt of this letter marked Plaintiff's Exhibit No. 4, a letter from C. C. Slaughter, dated February 27th, in reply thereto, our bank did send this letter.

77 Mr. Gibboney: I offer it in evidence.

Marked Plaintiff's Exhibit 5, and read to the jury.

Mr. Gibboney: I offer in evidence, if your Honor please, a letter dated April 2, 1915, which counsel for the defendant concedes was received, and also a letter dated June 19, 1915, which counsel for the defendant concedes was received, both letters being addressed to the Harriman National Bank, and being signed by the two receivers of the Mercantile National Bank of Pueblo.

The Court: Making a demand?

Mr. Gibboney: Yes, making a demand.

The Court: Then I do not think it is necessary to read them to the jury.

Marked Plaintiff's Exhibits 6 and 7, and shown to the jury.

Recross-examination.

By Mr. Kraus:

This paper is a copy of a telegram sent by me on March 26th to W. B. Slaughter.

Mr. Kraus: I offer this as well as the letter which followed as they are all stipulated together.

Marked Defendant's Exhibits D and E.

By Mr. Gibboney: A letter written by me on March 24th was sent on or about that date.

Mr. Gibboney: I offer it in evidence.

Marked Plaintiff's Exhibit 8.

78 The Witness: This telegram acknowledged receipt of that.

Mr. Gibboney: I offer it in evidence.

Marked Plaintiff's Exhibit 9.

Mr. Gibboney: Plaintiff rests.

Mr. Kraus: I move to dismiss the complaint on the ground that the plaintiff has not made out a prima facie case, and call your Honor's attention to the fact that they have wholly failed to prove

any privity between the Mercantile National Bank and the Harriman National Bank. They have wholly failed to prove any contract upon which they can base an action to recover from the Harriman National Bank any moneys. It does appear that the Harriman National Bank agreed to make a man named Slaughter a loan. At the very worst we have broken the agreement to make the loan to Slaughter. There was absolutely nothing in the case to show that the Mercantile National Bank succeeded in any way to the rights of W. B. Slaughter. We have here telegrams from the Mercantile National Bank directing us to do certain things, but no telegram, no message from W. B. Slaughter except that letter representing another transaction and pronouncing it as a forgery. I contend, therefore, that they have wholly failed to show any cause of action existing in favor of the plaintiff against my client, they have failed to show anything more than a few entries in books, but I contend that while entries in books are evidence, rather admissions

79 you might say, against interest and are some evidence as to the transactions which occur, yet those items themselves are not sufficient to constitute a contract. There must be a contract or some agreement or some understanding between the parties. There is no mutuality here, no consideration or any promise on our part to do anything for the Mercantile National Bank, nothing here except letters from W. B. Slaughter requesting confirmation of this request. I claim there is an entire absence of any contract between the parties.

Motion denied. Exception by Mr. Kraus.

JOHN A. NOBLE, recalled:

Direct examination.

By Mr. Kraus:

This paper was received at our bank.

Mr. Kraus: I offer it in evidence.

Marked Defendant's Exhibit F.

The Witness: After we received that letter marked Defendant's Exhibit F, our bank sent this telegram of which this paper is a copy.

Mr. Kraus: I offer it in evidence.

Marked Defendant's Exhibit G.

The Witness: After we sent that telegram we sent this letter.

Marked Defendant's Exhibit H.

80 The Witness: After that letter was sent, we received this in reply.

Marked Defendant's Exhibit I.

Mr. Kraus: It purports to have the signature of W. B. Slaughter.

The Witness: When I received that letter I looked at the signature

to it. I believed that signature to be that of W. B. Slaughter. I am familiar with the signature. We had a card in our bank with his signature on it.

The Court: Is that an autograph signature or stamp?

Mr. Kraus: An autograph signature.

This is the card we had in our bank containing the signatures of the officers of the Mercantile National Bank.

Marked Defendant's Exhibit J.

The Witness: This is the note which accompanied the letter.

Mr. Kraus: I offer it in evidence.

Marked Defendant's Exhibit K.

Mr. Kraus: It purports to be signed by W. B. Slaughter and C. C. Slaughter.

The Witness: In the letter of February 7th, marked Defendant's Exhibit I, and with that note these three certificates were enclosed.

Mr. Kraus: I offer them in evidence.

Marked Defendant's Exhibits L, M and N, and shown to the jury.

81 Mr. Kraus: I also offer in evidence the transfers on the back of these certificates so that there will be no question about it.

The Court: You do not need to mark them as separate exhibits.

The Witness: When I received the certificates which have been marked in evidence as Defendant's Exhibits L, M and N, I believed the signatures of those certificates to be genuine; the signatures to the transfer of the certificates on the back to be signed by W. B. Slaughter in his handwriting, and the certificate marked Defendant's Exhibit N, purporting to be signed by the First National Bank of Silverton, Colorado, for 400 shares of the capital stock of that bank, to be a genuine certificate. Those are the certificates which are mentioned in the note marked Defendant's Exhibit K, and mentioned in the letter, Defendant's Exhibit I, and in the letter marked Defendant's Exhibit F of January 28th. When I agreed to make this loan that has been mentioned in these letters, I believed that the certificates were genuine and signature to the letter genuine, and the note signature genuine. In making this loan to W. B. Slaughter I relied on the genuineness of these certificates which you have shown me.

It is conceded that the Harriman National Bank would not loan any money on forged certificates.

Cross-examination.

By Mr. Gibboney:

This letter, dated February 10th, was sent by our bank on or about the date it bears.

Marked Plaintiff's Exhibit 10.

82 The Witness: A letter under date of February 10th, addressed to C. C. Slaughter, was sent by our bank.

Mr. Gibboney: I offer it in evidence.

Marked Plaintiff's Exhibit 11.

Mr. Gibboney: I offer in evidence telegram of March 25th sent to the Harriman National Bank.

Marked Plaintiff's Exhibit 12.

Mr. Gibboney: I offer this telegram in evidence to the Harriman National Bank.

Marked Plaintiff's Exhibit 13.

Mr. Kraus: I offer this in evidence.

Marked Defendant's Exhibit O.

Mr. Kraus: I will now read in evidence from the depositions taken for the purposes of this trial.

"FLORENCE M. BUCHANAN, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

By Mr. Kraus:

"Counsel for plaintiff here requested counsel for defendant to produce a letter dated January 28, 1915, addressed to Mr. Joseph W. Harriman, which was accordingly done."

That is this letter marked Defendant's Exhibit F, which was shown to you gentlemen before.

"The Witness: A letter dated January 28, 1915, addressed to Mr. Joseph W. Harriman, produced by counsel for the defendant was typewritten by me.

83 "I recognize that as my work. That letter was dictated by C. C. Slaughter. I do not know how the signature 'W. C. Slaughter' was placed upon that letter, nor who placed it thereon. I saw a rubber stamp in the bank having on it 'W. B. Slaughter.'

"That is the rubber stamp I had in mind. That stamp was kept in one of the cages on the rack, I don't know which one. I never used it. I saw C. C. Slaughter use it just once that I remember of, when we were getting out circular letters. The signature on that letter of January 28, 1915, looks like it was made by that stamp; I am certain that I handed that letter to C. C. Slaughter for signature, and I am just as certain that he dictated the letter.

"Counsel for plaintiff here offered in evidence said letter of Jan. 28, 1915, which is marked for identification P-111. Counsel for plaintiff also here offers in evidence a certain rubber stamp signature of 'W. B. Slaughter' which is marked for identification P-112."

By Mr. Kraus:

"A letter dated February 7, 1915, addressed to Jos. W. Harriman, produced by counsel for the defendant, was typewritten by me and dictated by C. C. Slaughter. I handed that letter to Mr. C. C. Slaughter for signature. I recognize the signature on that letter. It was written by Mr. Wheatley: I mean Will Wheatley. He didn't have any connection in the bank in February, 1915, that I know of. I have seen Mr. Wheatley write the name 'W. B.

84 Slaughter' a lot of times—on notes, mostly. I recollect some notes that I saw him write the name on.

"Counsel for Plaintiff here offered in evidence said letter of Feb. 7, 1915, which is marked for identification P-113. Counsel for plaintiff here called upon counsel for defendant to produce a certain telegram dated Feb. 17, 1915, which was accordingly done."

Mr. Kraus: This is the telegram marked Defendant's Exhibit A, and dated Pueblo, Colorado, February 17, 1915, addressed to the Harriman National Bank, and reads: "Please place \$30,000 personal account W. B. Slaughter to our credit, Mercantile National Bank."

"Counsel for plaintiff here offered in evidence said telegram of Feb. 17, 1915, which is marked for identification P-114."

Mr. Burditt: That is the letter that you have marked Defendant's Exhibit A.

Mr. Kraus: And the telegram referred to was the original of Exhibit A. That is considered in evidence.

"The Witness: The carbon copy of the telegram dated February 17, 1915, was written by me February 17, 1915, and dictated by C. C. Slaughter. It was given to the messenger boy to take to the office.

"Counsel for plaintiff here offered in evidence the carbon copy of said telegram of Feb. 17, 1915, which is marked for identification P-115."

Mr. Gibboney: That is the same telegram.

85 Mr. Kraus: 115 is the duplicate of or similar or identical to the telegram mentioned as Defendant's Exhibit A and may be considered in evidence.

"Counsel for plaintiff also here called upon counsel for defendant to produce a certain letter dated Feb. 22, 1915, addressed to Mr. Thos. B. Clarke, V. P."

Mr. Kraus: That is this letter marked Plaintiff's Exhibit 4, referring to Exhibit P-115.

"Referring to the Exhibit P-115, the words 'Mercantile National Bank' appearing in typewriting were written by me upon the carbon copy as well as upon the original.

"I always signed all the telegrams that way, coming from the bank. I always signed, 'The Mercantile National Bank.'

"Q. Were all telegrams which were signed, or which were sent from the Mercantile National Bank signed 'Mercantile National Bank?'

"A. Some are signed, 'C. C. Slaughter, cashier.'

"In determining which way to sign the telegrams I just used my own judgment. I was not told by C. C. Slaughter which way to sign the telegrams. I don't remember any telegrams that were signed by me 'The Mercantile National Bank,' or 'C. C. Slaughter, cashier,' were returned to me by Mr. Slaughter to have the signature changed, or that were changed by C. C. Slaughter by pen and ink or lead pencil.

"Telegrams were sent out as they were signed by me. This letter dated February 22, 1915, produced by counsel for the defendant, was typewritten by me. It was dictated by C. C. Slaughter.

"The signature upon that letter is C. C. Slaughter's.

86 "I have seen Mr. C. C. Slaughter write his name frequently. I recognize that as the signature of C. C. Slaughter.

"Counsel for plaintiff here offered in evidence said letter of Feb. 22, 1915, which is marked for identification P-116.

"I don't know that what purports to be a carbon copy of a telegram dated March 24, 1915, was written by me."

Mr. Kraus: This telegram is in evidence marked Plaintiff's Exhibit 12.

"The Witness: What purports to be the carbon copy of a telegram dated March 25, 1915, was written by me and dictated by Mr. Grisard. I am positive of that. I don't remember what I did do with the original of that telegram. I believe he took it. My recollection is that I handed the telegram back to Mr. Grisard.

"Counsel for plaintiff here offers in evidence carbon copy of said telegram of Mar. 25, 1915, which is marked for identification P-117."

Mr. Kraus: I will now read the deposition of Homer S. Tripp, of Pueblo:

HOMER S. TRIPP, called on behalf of the plaintiff, being duly sworn, deposed as follows:

"Direct examination.

"By Mr. Burditt:

87 "I live at Pueblo, Colorado, and am Clerk of the Receiver of the Mercantile National Bank, and have been since about June 15, 1915, the time Mr. Seldomridge came in. I was connected with the bank under Mr. Chapman, merely as a clerk. I was connected with the Mercantile National Bank prior to the appointment of a Receiver, as bookkeeper, practically from

March, 1912, until the time the bank was closed. I have been continuously employed by the two receivers since the appointment of Mr. Chapman as the first receiver. As bookkeeper, during the time of the bank, my duties were to list debits and credits as received from the teller's clerk, thereby verifying his lists, sorting debits and credits, and then entering them in the individual ledgers, making the necessary balances at the close of the day's business."

"Cross-examination.

"By Mr. Kraus:

"That telegram which I am now shown, under date of February 17th, 1915, sent by the Harriman National Bank to the Mercantile National Bank, was received by our bank.

"Mr. Kraus: I offer it, marked D-6 for identification.

"The Witness: I made a translation of that telegram which is the translation on the face of the telegram and is correct.

"Q. I show you this letter dated February 18th, 1915, purporting to have been sent by the Harriman National Bank to W. B. Slaughter, and ask you whether that letter was received by Mr. Slaughter, if you know?

"A. I do not know that it was.

"Q. Was it received at the bank?

"A. Yes, sir.

88 "Mr. Kraus: I will offer it in evidence.

"And thereupon the said letter so offered was marked for identification D-Exhibit 7."

"The Witness: This letter dated March 26th, 1915, purporting to have been sent by the Harriman National Bank to W. B. Slaughter, was received by the Mercantile National Bank.

"Mr. Kraus: I offer it.

"And thereupon the said letter so offered was marked for identification 'D-Exhibit 8.'

"Mr. Burditt: I will concede on the record that the Harriman National charged the account of the Mercantile National Bank on March 26th, 1915, with thirty thousand dollars.

"The Witness: This signature, W. B. Slaughter, on paper marked Exhibit D-2 for identification, is not in the handwriting of W. B. Slaughter, in my opinion and the signature of W. B. Slaughter upon that certificate, Defendants' Exhibit 1 for Identification is not in the handwriting of W. B. Slaughter and the signature of W. B. Slaughter in the form of transfer is not in the handwriting of W. B. Slaughter. The signature of C. C. Slaughter on the form of transfer, under the words 'in the presence of,' is in the handwriting of C. C. Slaughter. I know the handwriting of C. C. Slaughter.

The signature on this letter marked Plaintiff's Exhibit 113 for identification is not in the handwriting of W. B. Slaughter. C. C.

Slaughter was the cashier of this bank, of the Mercantile National Bank for approximately the first two years he had charge of the loans and the detail of the bank; and after he had complete charge of the bank.

"The first two years is from the period of August, 1911, to 1913, approximately; I would not say whether it was a year and a half or two years and a half, but it was sometime about that time. From about the beginning of 1913 until the bank closed he had charge of the entire bank, and I and everybody else obeyed his instructions. He instructed the employees in the bank as to their duties from time to time; in other words, he had complete management of the bank during that period. And whatever was done at the bank was done pursuant to his instructions. This deposit slip marked Exhibit P-201 is dated the eighth day of February, 1915."

Mr. Kraus: Will you produce that?

Mr. Burditt: Here it is.

Mr. Kraus: This is a deposit slip of the Mercantile National Bank showing a deposit to the account of W. B. Slaughter of this \$30,000 we are talking about. I will offer the deposit slip in evidence.

Marked Defendant's Exhibit P.

"The Witness: This deposit slip marked Exhibit P-201 is dated the eighth day of February, 1915. At that date this thirty thousand dollar fund had not been received as yet from the Harriman National Bank. This thirty thousand dollars, supposed to have been deposited on the eighth day of February, 1915, represented the proceeds of a note which was sent to the Harriman National Bank for discount. As a matter of fact, that note was only mailed to the Harriman National Bank on the 7th day of February, 1915. It takes for a letter to get from Pueblo to New York approximately, I would say, about three days and two nights."

Mr. Kraus: I will read the deposition of Lewis M. Reeves:

"LEWIS M. REEVES, called as a witness on behalf of the plaintiff, being duly sworn, deposed as follows:

"Direct examination.

"By Mr. Burditt:

"In my examination, particularly as to the \$30,000 loan, I found that credit to the account of W. B. Slaughter was made on the day following the mailing of the note to the Harriman National Bank. I take that from looking at Exhibit P-113, February 6th, 1915, was Saturday and the check for \$35,000 was cancelled on Monday, February 8th. By reference to the stock book of the Bank I can say

that there was issued to W. B. Slaughter stock on January 9th, 1911. Certificate number 173 was issued for ten shares, certificate number 174 for three and two-tenth shares. The stub in the stock book shows a receipt for those two certificates. Subsequently, and on January 24, further stock was issued to W. B. Slaughter, certificate number 169 for four hundred shares; on January 24th, 1911, certificate number 170, for ten shares. Subsequently further stock was issued to W. B. Slaughter. I cannot tell you all the dates; I will tell you the holding. On March 29th, 1915, when the Bank closed, W. B. Slaughter owned 1029 shares. I cannot state
 91 the exact date that The Harriman National Bank discounted that note for W. B. Slaughter and placed the proceeds to the credit of W. B. Slaughter on its books, but from my examination of the books and papers in the transaction, it is my opinion that this account was so credited after the 9th day of February. I should state that it could not have been credited before the 10th day of February, the date on which the note is dated; the note itself is dated the 10th day of February."

Mr. Kraus: I will now read the deposition of George F. Trotter:

"GEORGE F. TROTTER, a witness called on behalf of the plaintiff, being duly sworn, deposed as follows:

"By Mr. Kraus:

"I live at Pueblo, Colorado. My occupation is Assistant Cashier of the First National Bank of Pueblo, which is largely owned by M. D. Thatcher. It is one of the banks of which he is President. I have been connected with banks owned and controlled by Mr. Thatcher for a little over nine years. During the whole time my official position has been that of Assistant Cashier of the First National Bank of Pueblo, but you might say, my principal duties have been in connection with Mr. Thatcher's outside banks, and his outside personal interests. I know who owned the stock in the First National Bank of Silverton prior to February,
 1915. Just prior the date you speak of it was owned by Mr.
 92 M. D. Thatcher, Mr. J. H. Thatcher, Mr. Werkheiser, Mr. Allen, and Mr. Pearson.

"Concerning the negotiations tending to a sale of the stock of the First National Bank of Silverton to W. B. Slaughter I had a preliminary talk with C. C. Slaughter. I don't remember the exact date, but it was right after the first of January, 1915. I told Mr. C. C. Slaughter that I thought it would be possible for him to purchase the First National Bank of Silverton through Mr. M. D. Thatcher, and if he would combine his Silverton National with the First National of Silverton and I thought he could make good returns on his entire investment. He replied that he thought it would not be a bad idea, that he would see his father and let me know what his conclusion was. A few days later he telephoned me and said that he had been thinking it over, and that he would like to talk to Mr. M. D. Thatcher either on the line of selling the Silverton National to

him, or of purchasing the First National Bank of Silverton from him, and I made an engagement with Mr. Thatcher for an interview with Mr. C. C. Slaughter, which they had. My next connection with it was on Saturday, February 6th, after the deal had been made with Mr. Thatcher. Mr. Thatcher called me in his office—Mr. C. C. Slaughter was also there. Mr. Thatcher told me that he had made a deal and had sold the First National Bank of Silverton to Mr. W. B. Slaughter, and that there was a little detail or two which he would like to have me handle, as he was leaving that evening for California. The detail was the transferring of the stock from the Thatchers to the Slaughters. I cannot recall any further connection until the date of the failure of the Mercantile National Bank, on the 29th day of March, 1915.”

93

“Cross-examination.

“By Mr. Kraus:

“The officers of the First National Bank of Silverton, prior to the 6th day of February, 1915, were M. D. Thatcher, President; John H. Thatcher, Vice-President; J. H. Werkheiser, Cashier; B. B. Allen, Assistant Cashier. Prior to the 6th day of February, 1915, W. B. Slaughter was not the owner of any of the capital stock of the First National Bank of Silverton.

“Q. Look at that certificate dated the 4th day of February, 1915, purporting to be signed by W. B. Slaughter, President, and John H. Werkheiser, as cashier of the First National Bank of Silverton, Colorado, and state whether at the time that certificate bears date, W. B. Slaughter was president of that bank?

“A. He was not.

“Mr. Werkheiser was the cashier of the bank at that time. I know the handwriting of Mr. Werkheiser and can identify his handwriting. That certificate which I am shown is not signed by Mr. Werkheiser. I know Mr. Slaughter's handwriting—W. B.'s. I could identify his handwriting if I saw it. The signature, ‘W. B. Slaughter’ on that certificate is not in the handwriting of Mr. W. B. Slaughter. At the time that certificate bears date Mr. W. B. Slaughter was not the owner of the shares mentioned in that certificate. Four hundred in number. He was not the holder of any of the stock of the First National Bank of Silverton at that time.

94

“JOHN H. WERKHEISER, a witness called on behalf of the plaintiff, being duly sworn, deposed as follows:

“Cross-examination.

“By Mr. Kraus:

“This certificate numbered 29 and the certificate numbered 30 were the only certificates of stock ever issued by the First National Bank of Silverton to W. B. Slaughter.”

Mr. Kraus: I will offer certificate No. 29 in evidence.
Marked Defendant's Exhibit Q.

"There never was a certificate for 450 shares issued to him on the 4th day of February, 1915. Certificate marked Defendant's Exhibit 1 for identification does not bear any signature. The signature 'John H. Werkheiser' upon that certificate is not in my handwriting. That certificate was never issued by the First National Bank of Silverton. That certificate is not one of the regular forms of certificate of stock regularly issued by the First National Bank of Silverton. I say that the signature of John H. Werkheiser appearing in the certificate marked D-1 is not my signature and I never authorized anybody to sign that name for me, it is a forgery. The seal affixed to this certificate marked D-1 for identification—the seal which purports to be the seal of the First National Bank of Silverton is not an impression of the genuine seal of our bank. The seal affixed to certificate marked D-1 for identification was not affixed by me. At the date of this certificate marked D-1 for identification, which is the 4th day of February, 1915, W. B. Slaughter
95 was not the owner of any stock of the First National Bank of Silverton."

Mr. Kraus: I will now read the deposition of Mr. O'Brien.

"J. A. O'BRIEN, a witness called on behalf of the defendant, being duly sworn, deposed as follows:

"Direct examination.

"By Mr. Kraus:

"I live at Pueblo, Colo. I am in the printing business and have been engaged in the printing business in Pueblo for fifteen years. I manufacture stock certificates. I know C. C. Slaughter and W. B. Slaughter. Some time prior to the 4th of February, 1915, I had a conversation with Mr. C. C. Slaughter in connection with the printing of some stock certificates for him, I should say along about the 2nd or 3rd of February, 1915. He said they were in the market for some fine lithographed stock certificates, and wanted a price on them. He had me telephone to a lithographer in Denver to get a price on those; he said he would stand for the cost of the conversation. I gave him quotation the next day. I think that nothing was done for a couple of days, and then he called me up and said he wanted some printed ones immediately, M. D. Thatcher was going out of the city, and he wanted to have Mr. Thatcher sign them before he left. That was on the 5th, then, I believe,—according to our records; and we made seven certificates for him. I delivered those seven certificates to him. Certificate marked Defendant's Exhibit
96 1 for identification is one of the seven certificates which I delivered to him. I recognize that as one of the certificates printed by me and one of the seven which I delivered to Mr. C. C. Slaughter.

"Cross-examination.

"By Mr. Burditt:

"The other six certificates were in identically the same form as this. I made that delivery to Mr. C. C. Slaughter at the Mercantile National Bank. I did not see and had no conversation with W. B. Slaughter."

Mr. Kraus: I will now read the deposition of Joe H. Franz.

JOE H. FRANZ, a witness called on behalf of the defendant, being duly sworn, deposes and says:

"Direct examination.

"By Mr. Kraus:

"My business address is 425 Santa Fe; I live at 1108 East Fifth, Pueblo. I manufacture seals. I have been making them for the last fifteen years. On the 5th day of February, 1915, I had a conversation with C. C. Slaughter in regard to the manufacture of a seal. I had a conversation with him personally in regard to the making of the seal here; I made two others for him. I made another one for him for the county adjoining that, and I brought this one down, and he said he made a mistake, he wanted another one for the county adjoining that. I made a seal which he said was for the First National Bank of Silverton. That is the seal which I made the 5th day of February. The only conversation with him
97 about that seal was to make it up. I did make it up. I would know the impression of that seal if it was shown to me. I was shown this certificate marked Defendant's Exhibit 1 for identification and my attention called to the impression of the seal on that certificate; that impression was made by the seal which I made at the request of Mr. C. C. Slaughter for the First National Bank of Silverton. I think I delivered the seal itself to Mr. Slaughter; I think I brought it down myself; I am positive I did. And that impression which you have shown me is an impression of that seal."

Mr. Kraus: I will now read the deposition of Mr. William D. Wagner.

"WILLIAM DENNY WAGNER, a witness called on behalf of the plaintiff, being duly sworn, deposed as follows:

"Recross-examination.

"By Mr. Kraus:

"I have seen Mr. Wheatley write and matter written by him other than the name of W. B. Slaughter. His writing is not similar to that of W. B. Slaughter. I have seen Slaughter's writing and I say that their handwriting is different, entirely different. I have seen

Wheatley write the name of W. B. Slaughter. In writing that he would imitate the handwriting of W. B. Slaughter. The way he wrote the name, W. B. Slaughter, wasn't the way he usually wrote."

98 Mr. Kraus: I will now read the deposition of Mr. W. T. Wheatley, taken at Dalhart.

"W. T. WHEATLEY, a witness called on behalf of the plaintiff, being duly sworn, deposed as follows":

"Direct examination.

"By Mr. Burditt:

"I believe I signed that letter, a letter marked 'Exhibit P-113,' I am pretty sure."

Mr. Kraus: The letter referred to is Defendant's Exhibit I, purporting to be signed by W. B. Slaughter.

"The Witness: I am pretty sure I signed that letter. (Witness looks over letter.) I don't have any recollection of the letter. I can't right now recall just *was* was said, but that was a letter—one of the letters that Coney presented me to sign. I was asked to sign that letter by Coney (C. C. Slaughter). I did not sign the name of W. B. Slaughter to any papers which had any relation to or connection with the purchase of the First National Bank of Silverton except upon the request of C. C. Slaughter. I am certain of that. I never had any personal conversation with W. B. Slaughter concerning the purchase of the First National Bank of Silverton. The first time I signed Judge Slaughter's name it has been, I will say, thirteen years ago anyhow. Since the first time thirteen years ago
99 name to documents of one kind or another, almost continuously. I have from time to time right along."

"Cross-examination.

"By Mr. Kraus:

"I know nothing about the Silverton Bank deal outside of what I testified to to-day. I was not consulted about the details of the Silverton bank deal. My advice wasn't asked. I had nothing to do with the proposition except to sign some papers in connection with it. He mentioned that he was going to buy the Silverton bank, but I wasn't consulted in the details. I am shown this check marked 'Plaintiff's Exhibit P-21,' which I testified I signed the name W. B. Slaughter upon. As well as I remember, Coney asked me to sign it to purchase some telephone stock. He did not tell me why he wanted me to sign it rather than to sign it himself. I don't remember that he made any comment on that."

Mr. Kraus: I will offer this check in evidence.
Marked Defendant's Exhibit R.

"Q. Didn't you testify on direct examination that he told you to sign it because the check was going out?

"A. Something like that. Possibly it was because the check was going out.

"Q. What do you mean by that, 'check was going out'?

"A. I don't know—the check was going outside of the bank. All I know is that he asked me to sign it, and I signed it. I asked no questions. This note marked 'D-2,' dated February 10, 1915, the signature of W. B. Slaughter I think was signed by me. I am satisfied that I signed it. I identify the signature 'W. B. Slaughter' on D-2 as being in my handwriting.

"Q. I will show you a certificate of the First National Bank of Silverton marked 'D-1,' and call your attention to the signature 'W. B. Slaughter' upon the face of that certificate, signed above the word 'President,' and ask you whether that signature of W. B. Slaughter was signed by you?

"A. I don't recall signing that, but that looks mighty like mine. I think that signature upon D-1, W. B. Slaughter, is in my handwriting.

"Q. Now, I will again show you the certificate of stock marked 'D-1,' and the note marked 'D-2,' and ask you whether you recollect C. C. Slaughter asking you to sign the signature of W. B. Slaughter to those two papers?

"A. He asked me to sign them if I did sign them, and I think I did.

"Q. Do you recall that C. C. Slaughter asked you to sign the signature of W. B. Slaughter to these two documents you have in your hand?

"A. I never signed anything unless he did.

"Q. Please answer my question.

"A. I did answer it.

"Q. Do you recollect him asking you to sign the name 'W. B. Slaughter' to the two documents which you hold in your hand, marked, respectively, 'D-1 and D-2'?

"A. I don't recall signing those, and I can't recall him asking me—I can't recall signing these instruments.

"Q. Do you say that you do not recall C. C. Slaughter asking you to sign those two documents?

"A. Was that instrument collateral to this note?

"Q. Just answer my question.

"A. He asked me to sign them. I signed them, and he asked me to sign them. I remember him asking me to sign them. As I said, I remember that I never signed anything but what he did ask me. I remember of my own recollection him asking me to sign the signature of W. B. Slaughter to those two documents. I only remember that he called me in as usual and asked me to sign them. I don't recollect what was said and done at the time. The signature 'W. B. Slaughter' on the back of certificate No. D-1, affixed to the bottom of a transfer certificate, is in my handwriting. This letter marked 'D-3,' the signature of W. B. Slaughter, is in his handwriting personally. I didn't sign

that. W. B. Slaughter asked me to sign his name to the papers marked 'D-1' and 'D-2' only as I have told you.

"Q. Did W. B. Slaughter ever ask you to sign his name to those particular papers?

"A. Sign his name to anything that Coney presented to me.

"Q. Outside of that, did he ever ask you to sign his name to those specific papers, D-1 and D-2?

"A. That would cover those papers. He asked me to sign anything that Coney presented to me.

"Q. Did W. B. Slaughter ask you specifically to sign his name to these papers marked D-1 and D-2, mentioned those papers at the time?

"A. He asked me to sign any papers Coney presented to me. At that time he did not show me these papers. W. B. Slaughter never did show me D-1 and D-2. I couldn't tell you where W. B. Slaughter was on the 4th day of February, 1915. I do not recollect seeing W. B. Slaughter at all during the month of February, 1915. I don't think I saw him during that month. I was never known as W. B. Slaughter. I never went under the name of W. B. Slaughter. I never was the president of the First National Bank of Silverton, Colorado.

"Q. Look at this book marked 'P. Exhibit 209,' and particularly at page 88 of that book, and state in whose handwriting the signature of W. B. Slaughter at the bottom of what purports to be Minutes of the Director's Meeting set forth at page 88, and state in whose handwriting the signature of W. B. Slaughter is?

"A. That must be mine."

Mr. Kraus: That is the minute book. I now offer in evidence the minutes of the Directors' Meeting of the Board of Directors of the Mercantile National Bank of Pueblo, contained at page 88 of the book of minutes.

Mr. Kraus: The purpose is this, that this man Wheatley also forged W. B. Slaughter's name to the minutes of the meeting at the request of C. C. Slaughter and witnesses the general conspiracy. It shows that C. C. Slaughter was the man who directed all this.

Marked Defendant's Exhibit S.

"The Witness: I don't recall whether I was present at that directors' meeting or not. I have been present at a directors' meeting of the Mercantile National Bank. I stated that while I was with the Stockmen's Mercantile and Banking Company I signed the name of W. B. Slaughter to letters written by Slaughter. My handwriting is not similar to the handwriting of W. B. Slaughter. I just signed it kind of like he did. Tried to copy his signature. Tried to make the signature of W. B. Slaughter when I signed it look the way it appeared when he signed it.

"Q. Who told you to write the signature in such a way that it would look as if W. B. Slaughter signed it?

"A. I don't know—he told me in signing his letters that I could

103 sign his name like him—"You can sign my name like I do." He told me to sign his name so it would look as if he signed them.

"Q. Why did you sign his name in such a hand—in such a manner that it would look like his signature?

"A. Well, just signing letters for him, I just naturally signed it that way.

"Q. What was your reason for imitating his signature?

"A. Signing his letters.

"Q. Did you have any purpose in doing that?

"A. None whatever.

"Q. As a matter of fact wasn't your purpose to make people who received those letters believe that he had signed them himself?

"A. Well, it was his instructions; he said to sign them that way."

Mr. Kraus: I will now read the deposition of Mr. W. B. Slaughter.

"WILLIAM B. SLAUGHTER, a witness called on behalf of the defendant, being duly sworn, deposed at follows:"

"I have lived at Dallas, Texas, since some time in 1913. I was president of the Mercantile National Bank of Pueblo, Colorado. I recall I was elected president of that bank in ten or eleven—eleven I think, and I continued in that office up to the time it failed, the last of March or the first of April, fifteen. I am shown a paper marked D-2, purporting to be a promissory note dated February 10, 1915, for \$30,000.00. That paper does not bear my signature. The name 'W. B. Slaughter' signed to that paper is not in my handwriting. I was not present when the name W. B. Slaughter was signed to that paper. I never told anybody to sign the name

104 W. B. Slaughter to that paper. I never requested anyone to sign my name to that paper, marked D-2. It never came to my knowledge up to the time when that note marked D-2 matured namely, sixty days after February 10, 1915, that my name had been signed to that paper. I first learned that this paper marked D-2 bore what purported to be my signature last April, in Pueblo, when they had me in jeopardy, that was in April, 1915. I did not know prior to that time, know that an attempt had been made to borrow \$30,000.00 from the Harriman National Bank of New York, upon what purported to be a note signed by me. I did not, prior to that time, known an attempt had been made to borrow Thirty Thousand Dollars from the Harriman National Bank upon the paper marked D-2.

"Q. Mr. Slaughter were you ever president of the First National Bank of Silverton Colorado?

"A. I was informed last March that I had been elected president of that bank, but I never accepted—I haven't accepted the office.

"Q. Were you ever a director of the First National Bank of Silverton, Colorado?

"A. If they put me in a director at that time I never was in a

meeting as director. I never accepted the office of director of that bank.

"Q. Did you ever file with the officers of that bank, or with the Comptroller of the Currency at Washington, your oath of office as Director of the First National Bank of Silverton, Colorado?

"A. If I did I don't recall it. I don't think I did, and I certainly would recall it if I did. I told you that they informed me last March that I was a director and had been elected president. I don't know when it occurred. This paper which I am shown marked D-1, purporting to be Certificate No. 109 of the
105 First National Bank of Silverton, Colorado, which on its face purports to certify that I am the owner of four hundred shares of the capital stock of the First National Bank of Silverton, Colorado, upon the face above the word president, is not my signature. That signature is not in my handwriting. I never signed it. I never told anyone to sign my name for me to that paper. It first came to my knowledge that my name had been signed to that certificate over the word president just now. Prior to the taking of this testimony I had no knowledge that this certificate had been signed with my name as president of the First National Bank of Silverton. Looking at the certificate on the back of the certificate—I refer to the form of transfer—the signature, W. B. Slaughter is not my signature. It is not my handwriting. I never told anyone to sign that name for me on that certificate as it appears on it. I never requested anyone to sign the name of W. B. Slaughter upon that transfer certificate on the back of this paper marked D-1. It first came to my knowledge that my name had been signed to this transfer certificate on the back of the paper marked D-1 when you presented it just now. I *don't* know anything about it until then. At the present time, the time of taking this testimony, is the first time that it has come to my knowledge that my name had been signed to the form of transfer on the back of this certificate marked D-1.

"Q. I now call your attention to Exhibit marked D-2, purporting to be certificates No. 3, for 250 shares of stock of the Mercantile National Bank of Pueblo, Colorado, and ask you to look at the certificate
106 'form of transfer' on the back of that certificate, bearing the name W. B. Slaughter, and purporting to be signed in the presence of C. C. Slaughter, and ask whether that signature on that form of transfer on the back of the paper marked D-4 is your signature?

"A. No, sir, that is not my signature. It is not my handwriting. I was not present when it was signed. I never told anyone to sign it for me. I never told anyone to sign my name to that transfer, which you have in your hand, marked D-4. It first came to my knowledge that my signature had been signed to that form of transfer when you presented it just now. Prior to the present time I did not know that my name had been signed to the paper which you hold in your hand.

"Q. Now, look at this paper marked D-5, purporting to be certificate No. 4 for 250 shares of the capital stock of the Mercantile Na-

tional Bank of Pueblo, Colorado, and look at the signature W. B. Slaughter on the back of certificate, directly under the form of transfer on the back of that certificate marked D-5, and state whether that signature W. B. Slaughter was signed by you?

"A. No, sir, that is not my signature. It is not in my handwriting. I was not present when it was signed. I never told anyone to sign that signature, W. B. Slaughter. It first came to my knowledge that that name, W. B. Slaughter, had been signed to that transfer, as appears on it, when you presented it just now. Prior to the present time I had no knowledge that my name had been signed to that form of transfer on the back of that certificate.

"Q. I now show you Exhibit P-111, being a letter dated January 28, 1915, and ask you whether the signature W. B. Slaughter signed to that letter is in your handwriting or not?

"A. That is signed with a stamp. I had a stamp up there
107 in the bank when I signed the currency, and this is evidently signed with that stamp. I didn't sign it, though with my own handwriting. I had a stamp made there of my signature for stamping currency, and this is signed with that stamp. I was not present when this letter was signed with that stamp. I didn't know this letter was in existence until now. I never told anyone to write it for me.

"Q. Now, look at this letter marked P-113, a letter dated February 7, 1915, and state whether the signature W. B. Slaughter upon that letter was signed by you?

"A. No, sir, that is not my signature. I never authorized it signed and didn't know it was in existence until now. To-day is the first time I ever saw that letter. I know nothing of the facts and circumstances surrounding the sending of that letter nor did I ever ask anybody to write that letter for me.

"Q. I show you a paper marked Exhibit P-114, purporting to be a telegram signed Mercantile National Bank, and ask you what you know about the sending of that message to the Harriman National Bank?

"A. I know nothing about it. I never saw the original of that telegram, and I didn't *didn't* know it was in existence until now.

"Q. I call your attention to the message in that telegram, namely, 'Place thirty thousand personal account W. B. Slaughter our credit, Mercantile National Bank,' and ask you when it first came to your knowledge that that message had been sent?

"A. Just now when you presented it at this time. I never asked anyone to send that message to the Harriman National Bank.

"A letter dated June 25, 1915, and marked Exhibit D-3 bears my
108 signature, and the statements contained in that letter marked D-3 are true. However, I notified you long before this. I wrote you a letter with pen and ink while I was in jeopardy last April, from Pueblo and sent it out to be mailed. A letter similar in point to that, notifying you that I had never signed any note of that kind.

"Cross examination.

"By Mr. Burditt:

"My son managed the bank at Texline. He had charge of both the banks. He also ran the Mercantile National for me. -I had taken charge of the bank at Dalhart after he left there, up to the time I sold it, but the others he looked after. But he ran the bank at Dalhart, before he went to Pueblo; he was the cashier. I had him as the executive head of the different businesses I owned. He was the cashier of the different banks I was interested in. I didn't own them, I was interested in them. I owned the controlling interest in them. I ran the cattle business and my son ran the banking business.

"Q. What particular duties in the executive management of the Mercantile National Bank did you perform?

A. Well, I didn't perform much of any duties, only as I told you, I didn't stay there much. I was president. My son and Mr. Grissard ran the bank. He was the assistant cashier and my son was cashier and I was president. Mr. Grissard took his instructions from my son."

Mr. Kraus: I offer in evidence letter of December 12th, signed by W. D. Grissard, addressed to W. B. Slaughter.

Marked Defendant's Exhibit T.

109 "I let it be generally known in the bank and in the community that my son was running the bank for me. I didn't have to tell them, they could see it for themselves. He was running the bank. I had him there to run the bank for me. He took care of his and my business. I had implicit confidence in him. When I left Stratford my boy put W. T. Wheatley up there in the bank and I went up there and fired him out of the bank. I mean the bank at Pueblo. I did not, in July, 1914, say to Mr. Wheatley that any papers that were handed to him by Coney for my signature for him to sign them. I never saw Wheatley. I did not tell Coney that if he needed to have any papers signed by me to have Wheatley sign them. I told you that I never did do that. Coney never did say to me that he would have Wheatley sign my name to some papers that needed my signature if I was not there, or words to that effect. I never said anything like that. I think they told me that he couldn't do it because it wouldn't be legal.

"Q. Mr. Slaughter, you answered last night, in answer to the question: Then you did know that he borrowed some money from the Harriman National Bank? To which your answer was that you knew by that letter. Did you refer to the letter which the Harriman Bank sent to you subsequently to the making of the loan, notifying you that your note was due?

"A. Yes, I knew by that notice that that note was due there.

"Q. So that when you referred to the letter through which you got knowledge of the loan, you referred to the letter written you by

the Harriman National Bank subsequent to the time the loan was made?

"A. That note notifying me when the note was due. It wasn't a letter. And prior to receiving that notice from the Harriman National Bank that the loan purporting to have been made to
110 me was due, I had no knowledge from anyone that the loan had been made.

"Q. I show you certificate of stock of the Mercantile National Bank, marked D-4 and D-5, and ask you when, prior to this examination, you last saw those certificates, and where you saw them?

"A. About July 15, 1913, I went into my box in the Mercantile National Bank and got out some papers, and those certificates were there, certificates and other securities I had, were in that box, and that is the last time I saw them. I did not myself ever deliver those certificates to the Harriman National Bank. I thought they were in my box. I never directed anyone to deliver those certificates to the Harriman National Bank. Looking at these signature cards, bearing date January 8, 1912, the signature W. B. Slaughter on that card is in my handwriting."

Mr. Kraus: It was offered as D-10 out there, but I will now offer it in evidence.

The document was received in evidence and marked Exhibit U.

"Looking at this signature card, dated April 25, 1914, and the signature W. B. Slaughter on that card is in my handwriting."

Mr. Kraus: Which is in evidence here as Exhibit J.

"Mr. Kraus: I offer this in evidence and ask that it be marked Exhibit D-11.

"I never gave Wheatley power of attorney to sign notes in my name. I suppose Coney and Mr. Grissard, during the years
111 1914 and 1915, managed the Mercantile National Bank. They were there. I suppose they did. I wasn't there."

Mr. Gibboney: If your Honor please, I would like to read the cross-examination of Judge Slaughter at this point.

"Cross-examination:

"I am in the cattle business. That is the only business I am in now. I have been in the cattle business all my life, ever since I have been big enough to ride a horse. I am sixty-three. I started it here in Texas, right out a ways here, about six miles, in Palo Pinto County. When I was a small boy, probably when I was fourteen or fifteen years old. I worked up there in '63. My son's name is C. C. Slaughter, Coney C. Slaughter, or C. C. Slaughter. I think he was born in '78, the latter part of '78 or the spring of '79. I don't remember exactly. I don't remember the year when I became interested in the mercantile business at Stratford. It was '93 or '94. Somewheres along there, it may have been five, but I don't think it

was. Up to that time my son Coney had been working on the ranch with me. I bought and sold cattle after I moved to New Mexico, ever since he had been big enough to be a hand I had been buying and selling cattle, and he had been helping me. He had been buying and selling for me after he got old enough. I guess he bought some cattle and sold some for me. When he bought cattle, I paid for them. I gave a check for it. I paid for them by check, like I paid for all other cattle, either by cash or check. I don't know as Coney bought many of them, he may have bought
 112 some, or he may not, I don't recollect. I can't recall fifteen or twenty years ago everything that happened.

"Q. Did he go out and buy cattle alone, or did you go with him?"

"A. I can't tell you, because I don't recall. My best recollection is sometimes alone and sometimes with me. All the cattle which he bought were purchased for me and belonged to me, as far as I remember, and when they were sold the proceeds went to my credit. I had my bank account at different places. I can't tell you the different banks that I did business with. I think, perhaps, the first cattle he ever bought, he signed my name and put his initials under it, he always puts his initials under it, signed my name, signed W. B. Slaughter by C. C. S., was out in New Mexico, I think. It was the First National Bank of Socorro, it is long out of business, but I think it was at that time in business.

"Q. Now, in paying for these cattle, did I understand you to say that your son Coney issued checks on your account with the First National Bank of Socorro, and signed your name by C. C. S.?"

Mr. Kraus: I make the same objection, as immaterial.

The Court: Objection overruled.

Mr. Kraus: Exception.

(Reading:)

"A. Yes, by C. C. S. That showed that he signed it.

"Q. And those checks were honored by your bank?"

"A. Yes, by special agreement, you know. I sent him out to buy a special bunch of cattle, and he would draw on my account, and he would sign my name to the check and put his initials under it.

"Q. Then those checks were honored by your bank?"

"A. Yes.

113 "Q. You didn't give Coney a permanent power of attorney to sign checks for you?"

"A. No, I never gave any man a special form of attorney. I would just simply tell him to go out and buy a certain number of cattle, and if I couldn't go, I would tell him to draw on my account and sign the checks W. B. Slaughter by C. C. S., and not only him but other men have done that.

"Q. Were those the first checks against any bank account of yours, so far as you recall—"

"A. So far as I recall. He may have signed a few before that time, but that is the first I can recall.

"That was before he went to Stratford. The Stockman's Mercantile & Banking Company deposited its own money with some Kansas City bank. That has been many years ago and I don't recall. He drew checks on that account. I told him he could draw them if he had to, while I was away they had to be drawn, but I won't say that he did draw any. During the conduct of that business, if I was away and it was necessary for a check to be drawn for some legitimate purpose of business, I had told my son Coney that he could draw a check, sign my name and add his initials if he was there. He was away a great deal, too; we didn't either one stay there all the time. Whichever one of us was there would draw the check. I know Will Wheatley well.

"He went to work for me in that Stockman's Mercantile & Banking Company business, about the time we sold out; he kept the books and sold goods and done everything just like the others did. He wrote letters for me. He was a good penman and he just wrote them in plain hand, you know. After he wrote the letters he gave them to me to sign, laid them on my desk.

114 "Q. And those letters, if you had left the business for the day, he would sign them?

"A. No, I wouldn't allow anybody to sign my name. There may have been some little letters that he signed my name to, but if he did I didn't know it.

"Q. Well, don't you recall that he did sign the letters when you were there?

"A. Possibly he did, but I won't say whether he did or not. I don't recall those little things. If I was going out to my ranch I would say just sign those letters and put your initials under my name. Then he would sign my name, but he had instructions to put his initials under the name. I never saw one that didn't have the initials on. If he did, I didn't know it. I saw some on which he did use the initials; signed my letters with my name and put his initials under it, lots of them. I do recall seeing them; lots of them. Fellows would come in and say did you instruct this, and I would say yes.

"I had an account in the bank at Dalhart. My son went with me to Dalhart. I don't know as he went there at first or not. He came shortly afterwards if he didn't come at the time. We were closing up over there at Stratford and he may have stayed over there a little while. I really don't remember how—it has been so long that I have forgotten. During all the time that I was at Dalhart, I was president of that First National Bank of Dalhart, but I wasn't acting all the time. Other vice-presidents ran it and I was president. I think my son was cashier except during the year he was away in Lower California. He was doing business there for himself. I was interested. We were interested in a mine down

115 or California, he drew checks against my account at the First National Bank of Dalhart, if he signed them himself. I think the money was in some bank is my recollection. He may have drawn some checks, signing my name by C. C. S.; if any checks

were drawn that way, I had the clerks in the bank charge them to my account.

"Q. You never refused to honor any checks drawn against your account by your son in that way?

"A. Yes, I would write him a letter until I knew what they were for. When I found they were all right I had them honored. I don't recall any check, prior to March, 1916, that was drawn against any of my accounts, signed W. B. Slaughter by C. C. S., that wasn't honored. Well, I said that every one that I did see was honored, so far as I know. My son had charge of the bank at Texline and he also ran the Mercantile National of Pueblo for me. I kept my private papers at Dalhart until we sold the interest at Dalhart, and then I removed all the papers I had up to Pueblo. I think I said I bought the controlling interest in the bank at Pueblo in 1911. I am not sure. My son was there acting for me. I let him have the money to pay for the stock. I borrowed it, what I didn't have myself. I borrowed some in New York and some in St. Louis, from the Bank of Commerce at St. Louis. I didn't do much of anything around the Mercantile National Bank. I wasn't there but very little. I left it to my son to manage that business.

"Q. Did you own an automobile?

"A. Did I?

"Q. Yes?

"A. No. I didn't own an automobile. My wife bought one about the time I left, is the only automobile I had.

"Q. You paid for it, didn't you?"

Mr. Kraus: How is that material?

Mr. Gibboney: I don't see that it is very material.

116 Mr. Burditt: It was paid by a check signed by his son, and he admits it was properly drawn against his account.

Mr. Kraus: I think it is immaterial and irrelevant and incompetent, and it has no bearing on the issues.

The Court: I will let it in.

Mr. Kraus: Exception.

Mr. Burditt (reading):

"Q. You paid for it, didn't you?

"A. I guess she paid it.

"Q. It was an electric automobile, wasn't it?

"A. Yes.

"Q. Don't you know that you paid for it?

"A. That I signed a check for it?

"Q. Don't you know that you paid for it out of your bank account?

"A. Certainly it was paid for.

"Q. Don't you know that it was paid for out of your bank account at the Mercantile National Bank?

"A. It must have been she had some funds there, I don't know how much, I don't remember.

"Q. Well, you don't know whether it was paid out of your account or not?"

"A. Out of mine or hers.

"Q. It was purchased from the Waverly Electric Company, wasn't it?"

"A. Yes.

"Q. And you know it was paid for by a check that was signed by C. C. Slaughter, don't you?"

"A. No, sir, I didn't know that.

"Q. Well, if he did sign such a check and had not called it to your attention, you would have had it honored, wouldn't you?"

"A. I don't know whether I would or not. I don't know how he came to sign C. C. Slaughter to the check.

"Q. If he had signed the check W. B. Slaughter by C. Slaughter, you would have had it honored?"

"A. Yes, if it was all right, yes.

"Q. For that automobile?"

"A. Yes. * * * Mr. Grissard took his instructions from my son, I suppose.

"Q. Did you have any conversation with Mr. Grissard in which you told him, very shortly after you were elected president of the bank, that all checks drawn on your account signed by your son should be honored?"

Mr. Kraus: I object to that as immaterial and incompetent, and not binding upon this defendant, and not within the issues. Any conversations one such as that could not bind us in any way.

The Court: I will overrule the objection.

Mr. Kraus: Exception.

The Court: This is only a circumstance indicating authority.

(Reading:)

"A. No, I did not. I may have told him that any of my checks with my name signed to them, by my son, a legitimate small check, to pay it and charge to my account. Anything legitimate, a small transaction, anything I had around town. I don't know that I told him they should be honored, I don't recall it. I did not tell him that my son was authorized to sign my name to pay any bills I had around town. I know he did sign checks for that purpose. I know there was some small checks signed by him. I object to anybody signing my name. I told him to let the bills go until I came there. When these checks were charged to my account at the bank, I didn't raise any objection when I saw what they was for, I did not have my account looked over. My bank book was not balanced. They never gave me any. All I know is, I looked over the books of the bank to see how my account was. I never saw a pass book. I let my son keep track of my account there in the bank and I just looked through the books once in a while to see how it stood.

"Q. Who made your deposits?"

Mr. Kraus: I object to this as not binding upon us and it is wholly immaterial.

The Court: Overruled.

Mr. Kraus: Exception.

(Reading:)

"A. They were most of them sent in by different individuals, to be placed to my credit, when I sold stock."

I don't think W. T. Wheatley was employed in our Stockman's Mercantile and Banking Company. If he worked in there he may have worked there for a little while. I told you he came there to visit his brother, and he came over to Dalhart. He did not do a good deal of work at Stratford; we wasn't there long after he came out there, is my recollection, during the time he was there, he did quite a good deal of work. I got to know him pretty well. I took him with me to Dalhart and he worked at that bank until he got so he wouldn't attend to business, and I let him out, then I think he went with some railroad company. I was elected treasurer of a little railroad company up there, The Enid, Ochilree and Western. I guess I had a conversation with Mr. Wagner about becoming treasurer of the railroad company. I had an account with the First National Bank of

119 Dalhart as Treasurer of the E. O. & W. Railroad Company. I had funds in that account and checks were drawn against it in payment of the bills of the railroad company. The checks were signed by W. B. Slaughter, by W. T. W., I guess. They had made him assistant treasurer because I wasn't there all the time. I told the man in the bank there to watch it, Mr. Adair, he was the man in the bank and I cautioned him about everything. I don't think Wheatley was an officer of the railroad company. I was an officer, and I think he worked there under Wagner in the office. Somebody had to sign the checks and they just agreed that Wheatley could sign them for me; the stock directors and all of them there, we talked it over. I didn't give him any power of attorney. I just told them in the bank that he could sign my name, they came up to the bank and the arrangement was made there that he could sign my name to the checks. That was after the time I said I fired him because he wouldn't attend to business. I think Mr. Wagner was the man who suggested Wheatley as assistant to me. Before that, Wheatley may have signed some checks for me that I had him sign and put his initials to them. Will Wheatley went to Pueblo, my son took him there. I said yesterday that I let my son run the banking business and I ran the cattle business. I first met Wm. D. Grissard when I went up there and bought the bank, I think it was in December, 1910, or January, 1911. I can tell you that from the books. I found him as assistant cashier there, and retained him in that position. And he stayed there in that position until the bank failed. I got to know him quite well and had considerable confidence in him. I never gave him any special authority. I always found him truthful and honest, always very honorable. I have no recollection of having, shortly after I became owner of the controlling inter-

120 est in the bank, a conversation with him about the authority of my son, C. C. Slaughter, to sign my checks, still, I may have had. I have no recollection of him asking me if my son Coney had authority to issue checks against my account. I wouldn't say that he didn't ask me such a question or the substance of it. I didn't tell Mr. Grissard that any checks that Coney drew against my personal account were all right with me, and to honor all such checks and charge them to my personal account. I never told any man that in my life. I may have told him that some special check would be all right, but I never gave any man general authority to sign my name to checks against my bank account. I didn't have that conversation with him. * * * I have no recollection of saying to Mr. Grissard, shortly after I became connected with the bank, words to this effect: He, Coney, has full authority; I gave him full authority and I am telling you that I gave him full authority, and whatever he does is all right. I don't know of any occasion for my making it. To the best of my recollection, I did not make any such statement to him. I have no recollection of making such a statement, or a similar statement to Mr. Grissard in reference to items charged against my account which bear the signature of C. C. Slaughter. I have no recollection of making any such statement in reference to the items which they charged to my account, which were signed W. B. Slaughter, by C. C. S. I would not say that I did not make such a statement. I wouldn't say because I don't recall making such a statement. I may have made it and I may have not.

"Q. Well, if Mr. Grissard says you made it would you probably say you did?"

121 Mr. Kraus: I object to that.

The Court: Overruled.

Mr. Kraus: Exception.

(Reading.)

"A. I may have made it. I don't know whether I did or not. I really don't believe I made the statement, though.

"Q. Isn't it a fact that Wheatley has shown you letters which he has signed your name to before mailing them out?

"A. We went over that thoroughly. I said that when he used to be there lots of letters he wrote and I would go out and tell him to sign my name to them and put his initials under it.

"I don't know whether I did or not say in the presence of Mr. Wheatley, that he could sign my name so that I couldn't hardly tell it from my own signature. I may and may not. I don't recall any such conversation.

"Q. You wrote that letter, Exhibit P-129, didn't you?

"A. Yes, sir; I wrote that letter."

Mr. Burditt: I offer that letter in evidence.

Mr. Kraus: I object to it as irrelevant and incompetent. No bearing upon the issues whatsoever.

Mr. Gibboney: It shows this custom of having Wheatley sign his name.

The Court: If you propose to prove that that signature is by Wheatley, and he know it, I will let it in.

Mr. Burditt: Slaughter signed the letter himself.

The Court: I don't know how you propose to connect it up.

122 Mr. Burditt: It was written in connection with these two letters. (Handing the Court some papers.)

Mr. Burditt: I don't care about the whole letter being in. I only want a small portion of each letter.

The Court: I don't see how authority to sign letters could be construed as authority to sign a note.

Mr. Burditt: I will offer in evidence only the passage that I read from papers marked P-129 and P-89 and P-130.

Mr. Kraus: Your Honor, you will allow me an exception. I object to it as incompetent, irrelevant and immaterial.

The Court: Yes. You will only read those particular passages to the jury?

Mr. Burditt: Yes.

The documents were received in evidence and marked Exhibits 14, 15 and 16.

"I sent Exhibit P-130, to my son. When I was in the bank at Pueblo, I wrote some letters myself, and when they were written they were laid on my desk by the stenographer to be signed. I signed the letters that I dictated. Sometimes she would take them back or I would put them in the envelopes myself. And then the porter would carry them to the post office.

"I suppose that is the system that was usually followed in the bank up there.

"Q. Now, I show you Exhibit P-41, and ask you if the words 'O. K., C. C. S., charge to W. B. Slaughter,' written on that paper in pencil is not in the handwriting of your son?

"A. I can't tell whether it is or not.

123 "Q. Well, now, do you know what Exhibit P-41 was for?

"A. For that car."

Mr. Burditt: I offer it in evidence.

The Clerk: Exhibit 17.

"The debit ticket dated 7/31/13, is in the handwriting of my son. The capital stock of the Mercantile National Bank was increased. I think it was increased one hundred thousand dollars. From \$100,000 to \$200,000. At that time I was the owner of quite considerable of the stock. And on the increase of the capital stock I had to invest considerable more money. I think I had most of the money in the bank at that time to take care of it, but I borrowed some money one time to care for the increase in the capital stock. I may have made a note and discounted it to the Dearborn National Bank just prior to the increase of the capital stock. I couldn't tell that that debit slip that I have just looked at dated 7/31/1913, is a payment on that loan that I made at the time of the increase of the capital stock of the Mercantile National Bank, I don't know."

Mr. Burditt: I offer that in evidence.

Document received in evidence and marked Exhibit 18.

"Referring to Exhibit P-10, the pencil notation on the bottom of that check where I have my thumb, is in my handwriting. I told Coney to charge it to my account. It is in his handwriting and I authorized it."

Document received in evidence and marked Exhibit 19.

124 "I know Nimrod Walpole. I bought five thousand dollars of stock in the Mountain States Telephone Company from him. I paid for it by check. I remember I had a conversation with him but I don't remember the date."

Mr. Burditt: I offer in evidence a check marked Plaintiff's Exhibit 52.

Mr. Kraus: I will object to it, to the admission of the checks, as incompetent and immaterial, and as having no bearing on the issues. I do not object on the ground that no foundation has been laid.

The Court: Objection overruled.

Mr. Kraus: Exception.

The document was received in evidence and marked Plaintiff's Exhibit A-19.

Mr. Burditt (reading): C. C. Slaughter first is written in ink and W. B. Slaughter is written over it. When it came back to the bank then they put these pencil marks on.

"That check is in the handwriting of my son, and that check was charged to my account by my authority. I said I owned a controlling interest in the Silverton National Bank and that I purchased it at the same time I purchased the controlling interest in the Mercantile National Bank.

"I know M. D. Thatcher. He was the president of the First National Bank of Pueblo. He also owned the controlling interest in the First National Bank of Silverton. I may have had a conversation with Mr. Thatcher relating to the two banks at Silverton.

125 "Q. To refresh your recollection as to the time, do you recall being in Denver and going from Denver to Pueblo with Mr. Thatcher?

"A. Yes, sir.

"Q. Do you know how long ago that was?

"A. I guess it was in eleven, wasn't it?

"Q. Mr. Thatcher says it was three or four years ago, that would make it 1911 or 1912, about?

"A. I think it was in eleven, it may have been twelve.

"Q. Now, did you on the train coming from Denver to Pueblo, talk with Mr. Thatcher about the two banks at Silverton?

"A. Yes.

"Q. Do you recall what that conversation was?"

Mr. Kraus: That is objected to as immaterial and not binding on this defendant, and as having no bearing on the issues.

The Court: I will overrule the objection.

Mr. Kraus: Exception.

"A. Yes, we talked about there not being business enough there for two banks and about consolidating them, or one buying the other out, and I told him I was perfectly willing to dispose of my interest, and whenever the time came I was perfectly willing to turn loose of my interest, or buy his. I have forgot the conversation.

"Q. Was the conversation, in substance, as have related now?

"A. Yes.

"No consolidation was effected at that time. I didn't sell my interest in the Silverton National, nor did I buy his interest in the First National. I did not have a personal account with the Harriman National Bank. I think my son told me he made arrangements with Mr. Harriman for the rediscounting of certain of the paper of the Harriman National Bank. I think he told me something about that. I have forgotten. I don't remember the date.

126 "Q. Do you recall, now, the note for \$25,000, signed by you and by your son, to which the collateral mentioned in the letter dated January 4th, 1912, was attached?"

Mr. Kraus: I object to that as immaterial, a transaction years ago.

The Court: Objection overruled.

Mr. Kraus: Exception.

"A. No, I don't recall it. My son and I did borrow, about January, 1912, \$25,000 of the Harriman National Bank, or a bank in Chicago, I don't remember which, one or the other. I presume we borrowed it.

"Q. Now, I show you a telegram, dated January 10, 1912, addressed to C. C. Slaughter, cashier, produced by counsel for the defendant, and I ask you if you didn't talk over with your son the matters to which that telegram relates?

"A. No, I don't remember a conversation we had about this, if we ever had one. I don't say we did.

"Q. Now, I show you what purports to be a copy of a letter dated January 10th, addressed to C. C. Slaughter, cashier, produced by counsel for the defendant, and I ask you if you don't recall having seen the original of that letter?

"A. Yes, I remember that letter."

Mr. Burditt: I offer that letter in evidence.

Mr. Kraus: I object to it as immaterial, and having no bearing on the issues in this action.

Mr. Burditt: This is a letter which shows his knowledge
127 of the loan, and the manner in which it was handled, and the security as collateral.

The Court: I will overrule the objection.

Mr. Kraus: Exception.

The document was received in evidence and marked Plaintiff's Exhibit 20.

"In June, 1912, I owned 200 shares of stock in the First National Bank of Dalhart. I also owned 70 shares of stock in the Silverton National Bank. I also owned two notes amounting to \$20,000. I recall that letter, that refreshes my recollection as to my son and I borrowing the \$25,000 from the Harriman National Bank, and I directed my son to carry on that correspondence that I have just seen.

"Q. And you directed him to have that amount credited to the Mercantile National, which was done at the Harriman National Bank?

"A. No, I didn't direct him to do that.

I didn't have a personal account with the Harriman National Bank. I intended to have the amount credited to the Mercantile National Bank and then have the Mercantile National Bank credit it to my account for our use. I don't remember how I used that \$25,000 I borrowed, but I recall the loan. I ordered all my notes paid when they were due. I had the money there to my credit.

"I ordered the bank to pay every one of my notes that I had come in there that my name was on and I had the money there to take it up. I suppose the note was paid. Mr. Harriman would have been after me if it had not been paid.

"The letter dated April 29, 1912, is signed by my son. That refreshes my recollection."

128 Mr. Burditt: I offer the letter in evidence.

The document was received in evidence and marked Plaintiff's Exhibit 21.

"I guess I ordered sent a telegram dated April 29, 1912, to the Harriman National Bank, reading as follows: 'Will you allow extension of twenty-five days on loan, will deliver my steers May 20th. Answer. Writing fully?' I ordered my son to send it, I was in Texas, to get an extension if he could."

Mr. Burditt: I offer that telegram in evidence.

The document was received in evidence and marked Plaintiff's Exhibit 22.

"I don't recall signing a renewal note. A letter dated May 3, 1912, is signed by my son."

Mr. Burditt: I offer that letter in evidence.

Received in evidence and marked Plaintiff's Exhibit 23.

"I couldn't tell until I look at the letter and read it if this is my signature. It looks lots like my signature, but I can tell by the context of the letter. I have no recollection that I sent the letter enclosed with the note."

Mr. Burditt: I offer that letter in evidence.

Received in evidence and marked Plaintiff's Exhibit 24.

"When I bought different banks, I had to borrow some money.

129 And whenever I did buy some bank, I had to borrow money in paying for the stock. Either for that or to pay for cattle; one of the two. It is just as broad as it is long. I have refreshed my recollection by the letters which you have shown me. I recall that original borrowing of \$25,000 at the Harriman National Bank, and my son, in carrying on the negotiations for that loan, and in finally getting the loan made and depositing the collateral, was acting under my instructions. And in carrying on that correspondence with the Harriman National Bank, he was acting under my instructions.

"Q. Judge, when did you first ascertain, if ever, that you had invested any money in the First National Bank of Silverton?

"A. When did I ascertain what?

"Q. That you had invested any money in the First National Bank of Silverton?

"A. I found out I had invested—that my money was all gone—when I went up there. I suppose it went into the First National Bank of Silverton. I first knew that my son Coney bought a controlling interest or bought out the interest of Mr. Thatcher in the First National Bank of Silverton when I met my son down at El Paso, in March. Before that I knew there had been negotiations, but I didn't know they had been closed.

"Q. How did you know of the negotiations?

"A. Well, he wrote me, wanting me to buy the bank, and I told him I preferred to sell the other. I told him I didn't know whether we would be able or would have enough money to buy it or not, but if we had enough money and everything was all right, I was perfectly willing to buy the bank. I think it was all done in one letter.

130 "Q. Did you tell your son that if he could make the arrangements to pay for the stock it was all right to go ahead and buy it?"

Mr. Kraus: I object to that as immaterial and not binding upon this defendant, and having no bearing on the issues. It is a matter between two outside parties.

Mr. Gibboney: He said he talked with his son in El Paso in March.

The Court: Overruled.

Mr. Kraus: Exception.

"A. I told him when I met him at El Paso, he told me he bought the bank, and I said how did you pay for it, you didn't take all my ready cash to pay for that bank, did you, and he said no, I didn't take it all, and that everything would be explained.

"Q. Did he tell you he had borrowed any money at the Harriman National Bank?

"A. No, he didn't tell me he had borrowed any money.

"Q. You didn't know he had borrowed any money?

"A. No, I didn't know about the conditions until I got up there.

"Q. Did he tell you he would have a lot of the stock issued to you?

"A. I don't remember whether he told me that or not, I don't think he did.

"Q. Did he tell you he would have you elected president?

"A. Yes, he told me that it was the intention to have me go in as president, and I told him I couldn't go in as president. I told him I was president of the Silverton National Bank and I was satisfied with that.

"Q. What else was said at that conversation at El Paso?

"A. As to who should run the bank?

"Q. What was that?

131 "A. That if I had taken the bank and put my money in the bank, the man that was in it was to run it, Mr. Werkheiser.

"Q. What date was that?

"A. I think that was the first Tuesday in March. I think that was when the convention convened there.

"Q. Who was present at that conversation?

"A. Nobody but he and I, talking, we were just sitting down.

"Q. You and your son?

"A. Yes.

"Q. Wasn't Mr. Werkheiser there?

"A. Later on, yes, he came down there and we talked things over there generally, in his presence.

"Q. He came down there with your son, didn't he?

"A. I don't think he came down there with him.

"Q. He was there during the first two or three days in March?

"A. Yes.

"Q. And talked to your son about the bank?

"A. Yes.

"Q. And did you talk to him about the management of the bank at that time?

"A. I told him that if I went into the bank I wanted him to run it, that I thought he was more competent than the man in the other bank, and had more experience.

"Q. At that time you knew that you were the owner of quite some shares of stock in that bank, didn't you?

"A. I didn't know what I had. I told my son that this all hinged on the conditions he would find out up there.

"Q. Did you know at that time that you were elected president?

"A. He told me I was, but I told the other man that he would probably stay in until they were consolidated.

"Q. That he would stay in until they were consolidated?

"A. Yes.

"Q. Now, did you know how much money you had in the Mercantile National Bank at that time?

132 "A. Yes, I know I ought to have had eighty thousand dollars there at that time.

"Q. How much?

"A. Eighty thousand dollars.

"Q. Did you ask your son how much he had in there?

"A. I don't know whether I did or not, I may have and may have not.

"Q. Did he tell you how much he had paid for the bank?

"A. No. Well, I think he told me it cost \$72,000 is my recollection.

"Q. Did he tell you how he had paid for it?

"A. No, he didn't tell me how he had paid for it.

"Q. Did he tell you that he had paid 50% or \$35,000 cash?

"A. No, he didn't. I told him when I come up there we will look over everything and if everything was all right it was all right with me."

Mr. Kraus: Your Honor will remember that these conversations took place long after this transaction. I don't see how it is material. A conversation in March about a transaction that took place in February.

The Court: I will let him answer when he paid the \$35,000.

"Q. Did he tell you he had given Mr. Thatcher a note for \$35,000?

"A. No, he didn't tell me anything.

"Q. Did he tell you he had borrowed some money from the Harriman National Bank?

"A. No, we didn't talk over things at all. I was very busy and didn't have much time to talk things over.

"Q. Did you ask him where your stock in the Mercantile National Bank was?

"A. Did I ask him?

"Q. Yes?

"A. No, I had no occasion to ask him.

"Q. Where was it?

"A. It ought to have been in my box.

133 "Q. In your box?

"A. Yes, at the Mercantile National Bank at Pueblo. The first time that I heard, or had any communication from my son relating to the purchase of the First National Bank of Silverton, was along probably in February, perhaps. I was requested by my son to come up to Pueblo at the time he was negotiating for the purchase of the First National Bank of Silverton. I told him I couldn't come. I did not know prior to the purchase of the bank, and prior to the conversation that I had in March in El Paso with my son, about the details relating to the purchase. That was the first time that the price of the bank had ever been mentioned to me. He may have wrote me before that, now, about the price. I wouldn't say for sure. I presume I received this telegram all right Exhibit P-154, dated January 18, 1915, from my son."

Mr. Burditt: I offer it in evidence.

Received in evidence and marked Plaintiff's Exhibit 26.

"Q. Now, I show you Exhibit P-95, and ask you if you received from your son the original of that letter?"

Mr. Burditt: That question he refused to answer on the ground it might tend to incriminate him.

"Mr. Atwell: I advise you, Judge Slaughter, that in my judgment, as your attorney, you shouldn't answer that question for the reason that your answer may tend to incriminate you and give evidence against yourself and make yourself a witness against yourself in the criminal proceedings now pending against you in Colorado.

134 "A. I refuse to answer that question.

"Q. I ask you, do you refuse to answer that question upon the grounds stated by your counsel?

"A. Yes."

Mr. Kraus: I again make the objection that it is immaterial. It has no bearing upon the issues. I object on the further ground that the letters there from W. B. Slaughter to C. C. Slaughter are not binding.

The Court: What is the date?

Mr. Burditt: January 25, 1915. These are between W. B. Slaughter and C. C. Slaughter.

The Court: Overruled.

Mr. Kraus: Exception.

Received in evidence and marked Plaintiff's Exhibit 27.

"Q. Now, I ask you to look at Exhibit P-96, and say whether or not you received the original of that letter from your son?

* * * * *

"A. I refuse to answer the question.

"Q. Now, Judge, I ask you to look at Exhibit P-98, and say whether or not you received the original of that letter?

* * * * *

"A. I refuse to answer the question. I think I got that letter, Exhibit P-102."

Mr. Burditt: I offer that letter in evidence.

Received in evidence and marked Plaintiff's Exhibit 28.

135 "I think I received that letter, Exhibit P-106."

Mr. Burditt: I offer that letter in evidence.

Received in evidence and marked Plaintiff's Exhibit 29.

"Q. I ask you to look at Exhibit P-156 and say whether or not you sent the original of that telegram to your son?

"A. I don't recall—I can't say whether I did or not, perhaps I did.

"Q. You don't doubt much that you did, in reply to the telegram first received?

"A. Yes."

Mr. Burditt: I offer that telegram in evidence.

Received in evidence and marked Plaintiff's Exhibit 30.

"The signature, W. B. Slaughter, on Exhibit P-131, appearing in the middle of that page, is in my handwriting. I sent that letter, Exhibit P-131, to my son."

Mr. Burditt: I offer that letter in evidence.

Received in evidence and marked Plaintiff's Exhibit 31.

"I signed that letter, Exhibit P-133, and sent it to my son."

Mr. Burditt: I offer that in evidence.

Received in evidence and marked Plaintiff's Exhibit 32.

"I signed and sent that letter, Exhibit P-126, to my son."

136 Mr. Burditt: I offer that letter in evidence.

Received in evidence and marked Plaintiff's Exhibit 33.

"That letter, Exhibit P-137, was signed and sent to my son by me, and the postscript or notation at the bottom of that letter is in my handwriting."

Mr. Burditt: I offer that letter in evidence.

Received in evidence and marked Plaintiff's Exhibit 34.

"I signed and sent that letter, Exhibit P-138, to my son."

Mr. Burditt: I offer that in evidence.

Received in evidence and marked Plaintiff's Exhibit 35.

"I signed that letter, Exhibit P-139, and sent it to my son, C. C. Slaughter."

Mr. Burditt: I offer that letter in evidence.

Received in evidence and marked Plaintiff's Exhibit 36.

"I couldn't tell you when was the first time I knew I was elected president of that bank. I don't remember.

"Q. Now, Judge, having refreshed your memory by certain correspondence which I have shown you, will you say when was the first time you knew that your son was borrowing money at the Harriman National Bank in New York to finance that deal?

"A. I didn't know he was borrowing money.

137 "Q. Having refreshed your recollection, Judge, by these letters, do you recall having signed the oath of office as a director of the First National Bank of Silverton, Colorado?

"A. I may have signed it. I don't recall it.

"That check, Exhibit P-149, is in the handwriting of my son."

Mr. Burditt: I offer that check in evidence.

Received in evidence and marked Plaintiff's Exhibit 37.

Mr. Burditt: It is stipulated that Exhibit 37 was received by M. B. Thatcher, and bears his endorsement, and that it was taken in part payment for the stock of the First National Bank of Silverton.

"Q. Now, Judge, you did know that your son was buying the First National Bank of Silverton long before the purchase?"

"A. I only knew by that letter. I advised and corresponded with him regarding that purchase. I knew by that letter that he was borrowing some money from the Harriman National Bank. I knew what he wrote me. I didn't know it, only what he wrote.

"Exhibit P-131, which is a letter I have admitted was signed by me and sent to my son, is written on the regular stationery of the Bankers Trust Company. And the same is true of Exhibits P-133, P-138 and P-139. The Bankers Trust Company didn't have any other office than the main office of the Bankers Trust Company. So far as I know, all of the letters of the Bankers Trust Company were written at this main office in the Slaughter Building.

138 "Q. Now, Judge, do you recall receiving any letter from the Harriman National Bank shortly after March 30, 1915?"

"A. I got notice that the note was due. That is all the letter I received."

Mr. Burditt: I offer that letter in evidence.

Received in evidence and marked Plaintiff's Exhibit 38.

"Yesterday in my examination I said that I thought I had \$80,000 in the bank, in the Mercantile National Bank, in February of 1915. I didn't know that from January 15, 1915, to April 15, 1915, my credit balance was only \$2,176.10. The money was put in the bank there to my credit. I don't know that on December 8, 1914, my account was overdrawn to the extent of \$1,089.15. I don't know very much about my account with the Mercantile National Bank, I left it all to my son. He took care of the bank and my account. He made deposits for me and the others in the bank. And it seems like he made withdrawals on my account. He was authorized to make some and I have testified that he was. The name of W. B. Slaughter appearing on the face of those certificates, Exhibits D-4 and D-5, is in my handwriting."

Mr. Burditt: Exhibits M and N, as marked in this trial.

"Those two certificates were delivered to me and issued to me. I got them and put them in my box. They represented shares of stock which I owned."

Mr. Kraus (now reading):

"I don't know that he did borrow that money at the Harriman National Bank for the purpose of purchasing the controlling interest in the First National Bank of Silverton.

139 "Q. Mr. Slaughter, you answered last night, in answer to the question: Then you did know that he borrowed some money

from the Harriman National Bank? To which your answer was that you knew by that letter. Did you refer to the letter which the Harriman Bank sent to you subsequently to the making of the loan, notifying you that your note was due?

"A. Yes, I knew by that notice that that note was due there.

"Q. So that when you referred to the letter through which you got knowledge of the loan, you referred to the letter written you by the Harriman National Bank subsequent to the time the loan was made?

"A. That note notifying me when the note was due. It wasn't a letter. And prior to receiving that notice from the Harriman National Bank that the loan purporting to have been made to me was due, I had no knowledge from any one that the loan had been made. Wheatley had not been signing checks for me before that. He may have signed some checks that I had him sign for something and I had him put his initials to them. I don't recall it if he did. He may have done it. I did not have him sign promissory notes. That would be the same as giving my birthright away. If he signed any notes for me, he did it without my knowledge."

Mr. Kraus: The defendant rests.

Mr. Burditt: I read the deposition of Delia L. Porch taken in the city of Sherman, Grayson County, State of Texas, on the 27th day of March, A. D. 1916.

If your Honor please, we offer in evidence a letter, which
140 has been shown to the defendant's counsel, dated December 15, 1914, written and sent by W. B. Slaughter to C. C. Slaughter.

Received in evidence and marked Plaintiff's Exhibit 39.

Mr. Gibboney: I next offer in evidence a letter, dated January 23, 1915, signed and sent by W. B. Slaughter to C. C. Slaughter.

Received in evidence and marked Plaintiff's Exhibit 40.

Mr. Gibboney: I next offer in evidence a letter written by W. B. Slaughter to C. C. Slaughter, dated January 25, 1915.

Received in evidence and marked Plaintiff's Exhibit 41.

Mr. Gibboney: I next offer in evidence a letter sent on January 30, 1915, by W. B. Slaughter to C. C. Slaughter.

Received in evidence and marked Plaintiff's Exhibit 42.

Mr. Gibboney: I next offer in evidence a letter signed and sent by W. B. Slaughter to C. C. Slaughter, dated February 15, 1915.

Received in evidence and marked Plaintiff's Exhibit 43.

Mr. Gibboney: I produce a power of attorney which is referred to in that letter. The only reason we offer this is to contradict the witness Slaughter that he never gave a power of attorney to anybody.

Received in evidence and marked Plaintiff's Exhibit 44.

Mr. Gibboney: It seems that this power of attorney was witnessed by one who purports to be D. L. Walker, but there was a marriage, and the name is now Porch.

141 Mr. Burditt: The deposition of Florence M. Buchanan, of the City of Pueblo, State of Colorado, taken on the 12th day of January, 1916:

"FLORENCE M. BUCHANAN, called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

"Direct examination.

"By Mr. Burditt:

"I live at Pueblo, Colorado. My occupation is stenographer. I am employed by Mr. Seldomridge, Receiver of the Mercantile Bank. My position immediately preceding my present one was stenographer for the Mercantile National Bank, from August, 1913, until the time it closed. I was personally acquainted with W. B. Slaughter. I met him after I came to work for the Mercantile Bank, about the following December. I took some dictation from him. I was acquainted with C. C. Slaughter. I met him before I came to work here at the Bank. I had known him for some time before I came to work in the bank. I was hired by C. C. Slaughter. I just wrote the letters and attended to the correspondence, dictated by Mr. Slaughter and Mr. Grisard, and any others in the bank who had letters to write. I took my notes in books. I have some of the books, not all. I kept the filled books in the back room here in a little bookcase. I have searched for all of the note books which I used but have been unable to find all. I have such as I have been able to find. I have seen certain letters that I am to be shown during my examination and have made a list of them and have looked for the note books in which those letters were written. I

142 have not been able to find all of them. When a letter was dictated to me by C. C. Slaughter, I would write it and put it on his desk for him to sign, and he would sign it and give it back to me. His desk was in the front of the bank, and mine was right back of his. He put most all letters which I had written for him back on my desk. I would seal them and put them in a satchel to be mailed. We used stamped envelopes. I would put a letter in an envelope addressed on a typewriter and I would make the address on the envelope correspond to the address on the letter, and would put it in the satchel, and the porter would take it to the post office. In writing a letter I would keep carbon copies and filed them in the filing case that we had for all the letters. I frequently saw C. C. Slaughter sign letters."

* * * * *

"I show you a letter dated January the fifteenth, 1914, and ask you if that is your work?

"A. Yes, sir.

"Q. By whom was that dictated?

"A. C. C. Slaughter."

Mr. Kraus: I will stipulate that that was found in the files of the Mercantile National Bank.

Mr. Burditt: I offer it in evidence. It is stipulated that the carbon copy which I am offering was found in the files of the bank.

Mr. Kraus: I object to it as incompetent, irrelevant and immaterial, and not binding upon the defendant. This was not written by W. B. Slaughter, but by C. C. Slaughter. I claim that
143 letter is certainly not binding on us. Mr. C. C. Slaughter might have written, but it would not bind us. We have no means of protecting ourselves against anything he might write. I contend it is not admissible in evidence against the Harriman National Bank.

Mr. Gibboney: It is admissible in evidence to contradict the testimony of their witness, W. B. Slaughter.

Mr. Kraus: W. B. Slaughter has not testified to anything that is said in these letters. He has not admitted receiving these letters, but has denied receiving them.

Mr. Gibboney: He said he didn't know anything about the note, the loan from the Harriman National Bank, and the letter shows he did.

Mr. Kraus: That he received it does not tend to prove knowledge on his part.

The Court: Objection sustained.

Mr. Gibboney: Exception.

Mr. Burditt (reading):

"Q. I show you a letter dated December 4, 1914, and ask you if that is your work?

"A. Yes, sir.

"Q. At whose dictation was that letter written?

"A. C. C. Slaughter."

Mr. Burditt: I offer in evidence letter marked Exhibit P-93 for identification.

Mr. Kraus: I make the same objection.

Mr. Burditt: There is in evidence a letter from W. B. Slaughter to C. C. Slaughter, dated January 25, which relates to matter which is contained in this letter. "I don't know what to say to Mr.
144 Smith, and I am returning his letter and you can answer it as you think best." That is the letter dated January 25, 1915, from W. B. to C. C.

The Court: Is that enclosed in this letter?

Mr. Burditt: This letter encloses a letter from Smith to W. B. Slaughter.

Mr. Kraus: I contend that the statements made by C. C. Slaughter—

The Court: I don't care as to the truth of the statement, but there is evidence to show what knowledge W. B. Slaughter had.

Mr. Kraus: Your Honor will allow me an exception?

The Court: Yes.

Received in evidence and marked Plaintiff's Exhibit 45.

"Q. I show you a letter dated Feb. 3, addressed to W. B. Slaughter, and ask you if that is your work, and by whom dictated, it is addressed to W. B. Slaughter?"

"A. Yes, sir, that is my work, and it is dictated by C. C. Slaughter."

Mr. Burditt: I offer that letter in evidence.

The Court: That will be received in evidence.

Mr. Kraus: I want to object to it and preserve an exception.

The Court: Yes.

Received in evidence and marked Plaintiff's Exhibit 46.

"Q. I show you a letter dated February 7, 1915, and ask you if that is your work, and by whom dictated?"

"A. Yes, sir, dictated by C. C. Slaughter."

145 Mr. Burditt: I offer in evidence the letter marked Exhibit P-100 for identification. The receipt of the letter is acknowledged in Exhibit 35 of this trial.

Mr. Kraus: I make the same objection as I made heretofore, if your Honor will allow me an exception.

The Court: I will overrule the objection.

Mr. Kraus: Exception.

The document was received in evidence and marked Plaintiff's Exhibit 47.

Mr. Gibboney: If your Honor please, I offer in evidence the original oath of W. B. Slaughter as director of the First National Bank of Silverton, sworn to before R. F. Hanson, Notary Public, and which I have produced from the files of the Comptroller of the Currency.

The Court: What is the date of it?

Mr. Gibboney: Dated the 22nd day of February, 1915.

Received in evidence and marked Plaintiff's Exhibit 48.

The defendant's counsel, with refrence to Plaintiff's Exhibit 37, being the check drawn to the order of M. B. Thatcher for \$35,000, stipulates that the check in question was paid by the Mercantile National Bank on February 8, 1915.

The plaintiff reads in evidence the testimony of Lewis M. Reeves, taken in Pueblo, Colorado, January 13, 1916. At the outset of the examination it was conceded by Mr. Kraus, counsel for the defendant, that Mr. Reeves is an expert accountant.

It is conceded on the record that the deposit slip produced has been offered in evidence at the trial and is Defendant's Exhibit P-201 (reading).

146 Mr. Burditt: It is conceded that on February 6th, 1915, the stock of the First National Bank of Silverton was owned as follows:

| | |
|--------------------------|-------------|
| M. B. Thatcher | 235 shares; |
| John A. Thatcher | 112 shares; |
| Lillian Thatcher | 123 shares; |
| B. A. Allen | 10 shares; |
| Robert Pearson | 10 shares; |
| John H. Werkheiser | 10 shares; |

total, 500 shares; representing a capital stock of \$50,000.

It is further conceded that, on February 10th, 1915, certificate No. 29 for 450 shares of the capital stock of the First National Bank of Silverton was issued to W. B. Slaughter. That certificate was issued in place of Certificate No. 28 in the name of Lillian Thatcher for 123 shares; Certificate No. 27 in the name of John A. Thatcher for 112 shares; Certificate No. 26 in the name of M. B. Thatcher for 5 shares; Certificate No. 172, issued to M. B. Thatcher for 225 shares; also Certificate No. 30 for 10 shares of stock was issued on that day to W. B. Slaughter, and Certificate No. 31 for 10 shares was issued on that day to C. C. Slaughter; that the 10 shares standing, respectively, in the name of J. H. Werkheiser, Allen and Pearson was retained by them.

It is further stipulated that the First National Bank of Silverton received the following communication:

147

"February 6th, 1915.

"To the Board of Directors of the First National Bank of Silverton, Colorado.

"GENTLEMEN: I hereby tender my resignation both as a director and as President of the bank. Please accept same at your earliest convenience, and oblige,

Yours truly,

M. B. THATCHER, *President.*"

"February 6th, 1915.

"To the Board of Directors of the First National Bank of Silverton, Colorado.

"DEAR SIRS: I hereby tender my resignation, both as a director and Vice-President of the bank. Please accept same at your earliest convenience, and oblige,

Yours truly,

JOHN H. THATCHER, *Vice-President.*

It is further stipulated that the following appears in the minutes of meetings of directors of the First National Bank of Silverton:

"Silverton, Colorado,

"February 11, 1915.

"Directors' Meeting.

"Present: E. B. Allen, Robert Pearson, J. H. Werkheiser.

"At a meeting of the Board of Directors of the First National Bank of Silverton, Colorado, held at the banking house, 148 this eleventh day of February, 1915, a quorum being present, it was, on motion, resolved, that in consequence of the resignations of Mr. M. B. Thatcher and Mr. J. H. Thatcher from the Board of Directors in the bank, the remaining directors appointed Mr. W. B. Slaughter and Mr. C. C. Slaughter as directors of this bank to fill vacancies caused by the resignation of the said M. B. Thatcher and John H. Thatcher.

"On motion, it was resolved that in consequence of the resignation of M. B. Thatcher as President and Mr. J. H. Thatcher as Vice President of this bank, the Board of Directors elected Mr. W. B. Slaughter, President, and Mr. C. C. Slaughter, Vice President of the bank to fill the vacancies caused by the resignation of the said M. B. Thatcher and J. H. Thatcher.

"E. B. ALLEN, *Chairman.*"

"Attest:

"JOHN W. WERKHEISER, Secretary."

Mr. Burditt: I will now read from the deposition of J. H. Werkheiser, taken at Pueblo, Colorado, on January 13, 1916.

"The occasion of my meeting with C. C. Slaughter and W. B. Slaughter on March 2nd and 3rd, 1915, was for the purpose of arranging for the affairs and transactions of the First National Bank. That meeting was at El Paso, Texas. C. C. Slaughter requested me to go to El Paso, Texas, by letter. I haven't that letter with me.

149 "Q. Now, who did you meet at El Paso, Texas?

"A. C. C. Slaughter and W. B. Slaughter.

"Q. And did you have a conversation there on either March 2nd or 3rd with either C. C. Slaughter or W. B. Slaughter?

"A. I did.

"Q. Will you, so far as you can recollect, give in full the substance of that conversation, stating by whom the different things were said?"

Mr. Kraus: That is objected to as incompetent and immaterial; too remote from the transaction, and too long after it took place, and not binding upon the defendant.

The Court: Overruled.

Mr. Kraus: Exception.

Mr. Burditt (reading):

"A. As near as I can recall our conversation at the Paso del Norte—in the lobby of the Paso del Norte Hotel—were in regard to the affairs of the bank, and that a consolidation was to be made, and the capital stock was in question, as to whether it would be advisable to increase the capital stock of the First National after the consolidation or not; Mr. W. B. Slaughter said he wasn't fully in sympathy with it; I think he said 'Cony here thinks you ought to increase the capital to give more prestige to the bank, and you could probably use it.' And I said my opinion was that an increase in the capital stock was not necessary, there wouldn't be any advantage or any profit in increasing the capital stock.

"Q. Was there anything in the conversation as to W. B. Slaughter's ownership of the stock of the bank?

"A. Why, it was understood by all of us that they were owners.

150 "Q. What was said, Mr. Werkheiser?

"A. I don't know as I can just recall.

"Q. Was anything said by Mr. W. B. Slaughter as to his having invested money in the bank?

"A. Yes; I think that was——

"Q. What was it?

"A. That he had bought; he and C. C. Slaughter owned the bank, controlled it, and it was that understanding, it seems to me."

Mr. Kraus: I move to strike out "and it was that understanding, it seems to me."

Mr. Gibboney: We consent.

Mr. Kraus: Strike out the answer that he had bought; he and C. C. Slaughter owned the bank, and "it was that understanding, it seems to me." When he says that understanding, he means all of this that you have read.

Mr. Gibboney: I will consent that that understanding be stricken out.

Mr. Kraus: No, I ask that the whole paragraph be stricken out.

Mr. Burditt: The Question before was, "Was anything said by Mr. W. B. Slaughter as to his having invested money in the bank?"

"A. Yes.

"Q. What was it?"

The Court: I will let it stay in.

Mr. Kraus: I take an exception.

The Court: Yes.

Mr. Burditt (reading):

"Q. Who asked you to remain in the bank as cashier?

"A. Mr. W. B. Slaughter and C. C. Slaughter, both. * * *

151 "Q. Did he tell you that you could take up different matters that came along with C. C. Slaughter?

"A. He did.

"Q. W. B. Slaughter told you that?

"A. Yes, sir."

Mr. Burditt: I will now read from the deposition of William D. Grisard, taken at Pueblo, Colorado, on January 11, 1916. Part of this has already been read. He was Assistant Cashier of the bank.

"I reside at 1925 Greenwood Street, Pueblo, Colorado. Prior to the time of the appointment of a receiver of the Mercantile National Bank of Pueblo, I was connected with that bank as Assistant Cashier. I had been since going to the Mercantile National Bank in about 1903.

"I was acquainted with W. B. Slaughter. I met him first in about January, 1911. I was acquainted with C. C. Slaughter. I met him at the same time in the Mercantile National Bank in Pueblo. They came in here to take charge of the bank, having purchased a controlling amount of the stock.

"W. B. Slaughter had an account with the bank. C. C. Slaughter had an account with the bank. They were opened about the time they took charge of the bank. The books will show here.

"C. C. Slaughter was in constant attendance at the bank. W. B. Slaughter was at the bank continuously until about the spring of 1915, I think, when he removed to Texas. I don't know just when he moved, but at that time, whenever it was. I don't remember now. Their first connection with the bank was January 23, 1911.

152 I would say I had the first conversation with Mr. W. B. Slaughter concerning C. C. Slaughter along in the summer of 1911. At the present time I am unable to fix the exact date for the reason that the conversation grew out of a check against W. B. Slaughter's account, signed by C. C. Slaughter. I do not recollect what the check was. It was some small check. I don't remember just what it was. The check was signed W. B. Slaughter, by 'C. C.' The conversation I had with Mr. W. B. Slaughter was, I asked him if his son, Coney, had authority to issue checks against his account, and he stated that he did; that any checks that Coney drew against his personal account were all right with him, and to honor all such checks, charging them up to his account. He went on to state that whatever Coney did was all right and perfectly satisfactory with him, or words to that effect. I think he said that his son, Coney, had full power and authority to draw checks against his account, and whenever they came in to honor them, charging them up to his account. That's about the size of it. I can't remember the exact words, but that was the impression I got. I think at the time of that conversation I showed to W. B. Slaughter the checks that I then had against his account. Subsequently on several occasions I have asked him if it was all right to charge up certain checks against his account, and he said it was all right, that Coney knew everything about his business and whatever Coney did was all right with him. That occurred several different times. I asked W. B. Slaughter if he wouldn't fix up a signature card, as it was customary, and to complete the files. He said that wasn't necessary, 'I am telling you now that Coney has full authority to check on my account,' and he said 'And that is all that is necessary.' And

from the time of that conversation, so long as I was con-

153 nected with the bank, I handled checks which were signed by C. C. Slaughter."

Mr. Gibboney: If your Honor please, we have a great stack of checks here which were drawn by C. C. Slaughter, signing W. B. Slaughter's name against his account, in pursuance of that conversation. I think we can save time by putting that in, if my friend will concede that similar checks were drawn by C. C. Slaughter on the account of W. B. Slaughter, the checks being signed "W. B. Slaughter, by C. C. Slaughter," or "C. C. S. on the Mercantile National Bank."

Mr. Kraus: Yes, I will concede that.

Mr. Burditt: I am reading from the deposition of William D. Wagner, taken at Dalhart, Texas, January 17, 1916.

"I live at Dalhart, Texas. You might say I have lived in town here for the last ten years. My business is real estate and insurance. I have been in that business fifteen years.

"I was once a director, and for one or two years I was vice-president of the First National Bank of Dalhart. I think it was 1907, 1908, 1909, 1910 and 1911 and 1912. I am acquainted with W. B. Slaughter who at one time lived in Dalhart. I don't remember the year he came here, but it was during those years that I have named. He was here from 1905 and until he went to Pueblo in 1911. He was president of the First National bank of Dalhart. I know C. C. Slaughter. He is the son of W. B. Slaughter. He was cashier of the bank here part of the time. * * *

154 "Q. Did you ever have any conversations with W. B. Slaughter in which he spoke of Mr. Wheatley?

"A. I don't recall any conversations except—it wasn't directly with me. We were building a railroad here, the E. O. & W. Railroad, and Judge Slaughter was spoken of for Treasurer, and he said the only condition under which he accepted the treasurership—in fact, he talked to me, and he said that he wouldn't take the office of Treasurer unless we would let him put Wheatley in there as Assistant Treasurer, because Wheatley was the only man who had authority, or he would let sign his name to instruments.

"Q. About when was that conversation, if you can recollect?

"A. No, I couldn't without going back. I would have to go back and look up the records. That was before he went to Pueblo, some time."

Mr. Burditt, reading from the deposition of E. T. Adair of the City of Dalhart, taken on January 17, 1916, at Dalhart, Texas:

"My occupation is banking. I have been cashier of the First National Bank since January, 1912. Prior to that time I was individual bookkeeper and assistant cashier from August, 1908, to January, 1912. When I first came to the bank W. B. Slaughter was president, R. L. Moore was cashier and J. E. Clarke was assistant cashier. C. C. Slaughter was not connected with the bank in any way at that time. In 1910 he came back to the bank and was here

until he went to Pueblo with the Mercantile National. It was in January, 1911, if I remember correctly. From 1910 until 1911 he was cashier.

155 "W. B. Slaughter had a personal account in the bank.

"W. B. Slaughter and C. C. Slaughter signed checks on that account. Checks signed by C. C. Slaughter came through my hands. Sometimes he would just sign them 'W. B. Slaughter,' and have 'C' under it, or somewhere on the check, and sometimes perhaps there wouldn't be anything on it, just 'W. B. Slaughter' signed by Coney. When those checks came through my hands, I honored them and charged them to the account of W. B. Slaughter all the time that Coney was cashier of this bank.

"Q. Did you ever hear Judge Slaughter make any remarks as to Coney drawing checks against W. B.'s account?

A. All that I could say was that I have heard him say to Coney as things would come whether they were paid or not, whether he had paid them, and charged his account, or remitted for them, but as to having heard him tell Coney to sign his name to checks for his account, I couldn't say that I have.

"I couldn't say who told me to charge the checks signed 'W. B. Slaughter,' by 'C.' or 'C. C. S.' to Judge Slaughter's account. As I said awhile ago, Coney was the cashier of the bank at that time, and he would make those charges against Mr. Slaughter's account, and Mr. Slaughter would have his checks at the first of the month and a statement, and check through them and never made any objections.

"I balanced Judge Slaughter's account from time to time and gave the pass-book and vouchers to Slaughter; that would include vouchers signed by C. C. Slaughter. I wouldn't say that I handed every one of them to him personally, but I handed some of
156 them to him personally. After I had handed to him personally statements of his account, including checks signed by C. C. Slaughter, he did not say anything to me about those checks; never to my knowledge raised any objection to the charging of checks to his account that had been signed by C. C. Slaughter. I couldn't say that I ever saw any checks against W. B. Slaughter's account which were signed by Mr. Wheatley. I have seen instruments which were signed 'W. B. Slaughter,' the signature having been written by Mr. Wheatley. Mr. Wheatley acted in the capacity of Assistant Treasurer of the E. O. & W. Railroad here, and he signed all of his checks. He signed those checks 'W. B. Slaughter.' Without any designation that they were signed by Wheatley. To the best of my knowledge they were just signed 'W. B. Slaughter.' He told me that Wheatley was handling the account for him, or something to that effect, and charge them to his account. I had another conversation with Judge Slaughter about Wheatley. I believe that when I was Assistant Cashier of the bank I did. I believe they called for a report of condition of the bank to the Comptroller, and I think I made the report out, and it was delayed in getting into the printer's hands here, making it late to get it to Washington, and Slaughter was out of town at

the time we got the call, and he told me after he got back, or asked me why I didn't have Wheatley to sign the report.

"I have heard Slaughter say at different times while he was president of the bank there and I was employed there in the bank, to parties that I can't recall to memory right now, to take those papers to Wheatley or hand them to him and he will fix them up for you.

157 "Coney looked after the Judge's business—individual or private business, while he was here; matters that come up, Judge has asked me to see Coney about it. I remember that at one time we got a letter from somebody in Iowa, I believe, with reference to some vendor's lien notes that this party wanted to pay, and I went to Judge for the note and he sent me to Coney after it. He told me to go ask Coney to get it for me.

"I know of my own knowledge that Coney Slaughter did look after the Judge's business here. He would arrange to borrow money for Judge Slaughter, and use Judge's collateral. For instance, I have in mind him writing to the National Park Bank of New York. I do not know how those letters were signed. I might have seen them but I don't know how they were signed. I know he was writing to the National Park Bank of New York, because I would hear him give the letters to the stenographer. I don't recollect whether those letters were written in the first person or third person. I am of the opinion that those letters were signed by Coney or C. C. Slaughter. I know money was borrowed in that way. He was writing to know if he could handle his father's note. He might have written it for Judge and Judge might have signed it. I wouldn't say as to that. I know money was borrowed on notes that were executed shortly after the writing of the letter that I mention. The money was placed to Judge Slaughter's personal account in the bank. I think that happened twice a year, or something like that. That occurred in 1910, I believe." * * *

"Redirect examination.

By Mr. Burditt:

"Q. Mr. Adair, did I understand from your answers to Mr. Kraus' questions that at times when checks came in signed
158 'W. B. Slaughter' by C. C. Slaughter, or 'C.' that before paying those checks you showed them to Judge Slaughter?

"A. Yes, sir. There was one time when Coney was down in Mexico. I would show all those checks to Judge. And when he was in California, when I was bookkeeper—1908 and 1909, Judge Slaughter would say to me when I would show those checks to him which had been signed by Coney, to pay them usually at the time speaking about the check which I had in hand. He told me to pay every check that I presented to him."

Mr. Burditt: I read from the deposition of W. T. Wheatley, of the City of Dalhart, taken at Dalhart, Texas, on January 17, 1916.

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"W. T. WHEATLEY, called as a witness on behalf of the plaintiff, being duly sworn, deposes as follows:

"Direct examination.

By Mr. Burditt:

"I live at Dalhart Texas, and with the exception of about four years I have lived there for the last fourteen years. I am thirty-seven. I was born in Kentucky. I am acquainted with W. B. Slaughter and with C. C. Slaughter. I first met W. B. Slaughter about fifteen years ago. I had a brother that was working for Mr Slaughter and when I came to Texas I came to Stratford, and two or three days after I got there I went to work for him in the mercantile business in a general merchandise store which was run under the name of Stockmen's Mercantile and Banking Company, at Stratford Texas. Mr. Slaughter was the president; 159 it was a corporation. Coney Slaughter was secretary and treasurer. I clerked in the store awhile, and then I took the books—bookkeeper, and I wrote letters while I was bookkeeper. Mr. W. B. Slaughter would very often hand me letters, and have me write letters for him. He usually told me what he wanted to say, and I would write it down and then copy it off on the typewriter. Sometimes after I would write it I would give it to him, and sometimes he would tell me to sign them up and mail them out. His personal letters he would tell me to sign his name to them. I would write W. B. Slaughter. I would not write anything else. Sometimes I think I put my initials on the letters, and sometimes I didn't. I showed to Judge Slaughter letters which I had signed using his name at the time I mentioned. He said that was all right—to mail them out. I had a conversation with Judge Slaughter relating to the similarity of my signing of his name and his own signature. In signing those letters I would sign them like he did, and he would say that was all right and thank me. I have heard him mention that I could sign the name so that he couldn't hardly tell it.

"The last time I saw Judge Slaughter was about the first of last April in Pueblo.

"I never signed Judge Slaughter's name to any instrument or paper or writing of any kind that he didn't personally ask me to sign. He instructed me that when he was absent, anything that came up, why, for me to sign it for him. He always told me that in his absence anything that Coney presented to me for me to sign it for him. When Judge Slaughter was going away, I said that he 160 told me to sign such papers as were presented to me by Coney Slaughter. I think in that conversation, he did not tell me to sign any papers that were not handed to me by Coney Slaughter. I was not left to my own judgment as to what papers I was to sign; just papers that Coney asked me to sign.

"That was all the papers that Judge Slaughter told me to sign; when he was going away he would just say to me, 'I am going away now and anything that comes up and Coney presents to you for my signature, you sign it.' I have signed a good many things. I have

signed notes and deeds and letters. I never signed any letters using Judge Slaughters name when I was not requested to sign the letter by Judge Slaughter himself or Coney. I couldn't say just when the last time was I signed Judge Slaughter's name. Been about a year ago. At Pueblo. I have seen Judge Slaughter sign his own name numerous times. I saw him sign his name up here at Pueblo. I believe I can tell the difference between the signature of W. B. Slaughter when signed by himself and when signed by me. Exhibit P-204, was not signed by me. Exhibit P-113 was signed by me, I am pretty sure, sir. I don't have any recollection of the letter. I can't right now recall just what was said, but that was a letter—one of the letters that Coney presented to me to sign. Coney asked me to sign that letter.

"Q. How many different times did W. B. Slaughter tell you that he was going away, and tell you to sign his name to such papers as Coney handed you?

"A. Well, I don't know just how many times but I remember different occasions him going away when he has told me that. I recall one occasion when he left Pueblo and went to Dallas; 161 it was some time in the fall of 1914. That was the last time that I heard him make that remark. I believe I did see him once after that.

"I cannot recall any time before that. No specific time—I might be able to recall some specific times, but he has told me at different times when he was leaving.

"Q. Has C. C. Slaughter been with you at the time he made that remark to you? Have you three been together?

"A. Well, I don't know. I don't recall that we three have been together, but I have heard him tell Coney in leaving. I heard him tell that to Coney when he came to Dallas from Pueblo. I recall the purchase of the First National Bank at Silverton by Coney Slaughter. I know about the time that he brought it. It must First National Bank of Silverton. I did not sign the name W. B. Slaughter to certain papers in connection with the purchase of the First National Bank of Silverton. I did not sign the name W. B. Slaughter to any papers which had any relation to or connection with the purchase of the First National Bank of Silverton except upon the request of C. C. Slaughter. I am certain of that. Absolutely. I never had any personal conversation with W. B. Slaughter concerning the purchase of the First National Bank of Silverton. After I had signed Judge Slaughter's name to certain instruments, I have spoken to Judge Slaughter about those instruments and told him that I had signed his name."

162 JOHN A. NOBLE, recalled on behalf of the plaintiff, in rebuttal, testified as follows:

Direct examination.

By Mr. Gibboney:

"The statement made out on the statement or bill head of the Harriman National Bank is a transcript of the account of the Mercantile

National Bank of Pueblo, Colorado, taken from the ledgers of the Harriman National Bank.

And that is a statement, sent by me to the Mercantile National Bank.

That is a statement similar to the one we sent all the customers of our bank, we render that statement monthly.

Mr. Gibboney: I offer that in evidence, if your Honor please.

Document received in evidence and marked Plaintiff's Exhibit 49.

The Witness: The date has been left off that statement. It is supposed to be a copy of the ledger. It could be filled in and that would be the proper date, the 18th.

That is the statement for the month of March, 1915, which was sent by our bank to the Mercantile National Bank of Pueblo, Colorado of the account up to the opening of business on March 27, 1915, and I believe was sent to the receiver at his request.

Mr. Gibboney: I offer that statement in evidence.

Document received in evidence and marked Plaintiff's Exhibit 50.

163 Q. Mr. Noble, I will ask you to look at the ledger account of W. B. Slaughter for the months of February and March, 1915. You have an account for those months with W. B. Slaughter individually, have you not, on your books?

A. We have an account in the month of February.

The items shown in our books referring to that account, are a credit on February 10, 1915, of \$30,000.

And opposite that word are the letters "dis." Discount W. B. Slaughter.

The next day, February 11, the balance \$30,000. The next day, February 13, Saturday being a holiday, \$30,000, February 15th, Monday, \$30,000, February 16, \$30,000.

February 17, at the opening of business on February 17, \$30,000. At the close of business \$21,368.82.

In other words, on the 17th day of February the account of W. B. Slaughter was debited with \$8,631.18.

I remember the account of the Mercantile, that it was overdrawn \$8,000 at one time. I don't know whether that is the date or not. But it mentions it in one of the telegrams.

Here is another entry on the next page showing it was transferred back, the same amount. The same amount, \$8,631.18. That closes the account that day.

On the 18th. There is a debit on that day of \$30,000. There is a corresponding entry of the Mercantile National Bank for \$30,000, on the same date.

Q. Calling your attention to the item in the account of the Mercantile National Bank as it appears for February 18th, I

164 will ask you if it does not appear that you charged the account of W. B. Slaughter on February 17th with the amount that the account of the Mercantile National Bank was overdrawn on that day?

A. I don't know what that entry is. There is a similar entry in both books. It may be that entry.

It is transferred back the next day. It may be an error. We make errors sometimes in banks. The W. B. Slaughter account? Closed—February 18th we have debited the \$30,000. The account was closed by a debt of \$30,000.

Cross-examination.

By Mr. Kraus:

Q. On Plaintiff's Exhibit No. 49, between the dates, the 16th and 18th, we find the word "transfer," and \$30,000 is brought out in the column. What was meant by the word "transfer"? What did you intend to signify by that (paper handed to witness)?

A. That was a transfer of \$30,000 from the personal account of W. B. Slaughter, transferred to the Mercantile National Bank of Pueblo, pending an advice from W. B. Slaughter with reference to making that transfer.

Mr. Gibboney: I move to strike that out.

The Court: It was a transfer made?

Mr. Gibboney: He cannot characterize a transfer.

The Court: I don't think he can do that. He can show what in the course of business "transfer" means.

By transfer in this case it would be taking funds from one account and placing them in another.

In this case we did that after receiving a telegram from the Mercantile National Bank, which has been marked in evidence.

165 That was the first time that this particular money was transferred into the account of the Mercantile National Bank.

That money was held in the account of the Mercantile some five weeks. I don't remember exactly how long.

Upon receiving a telegram we put it in; we waited a reasonable amount of time and took it out.

We took the money out of the Mercantile National Bank, because we had not received a confirmation from W. B. Slaughter that we had been correct in transferring it to that account.

Mr. Gibboney: The plaintiff rests, your Honor.

Mr. Kraus: I renew my motions to dismiss, on the same grounds as before.

New York,

June 2, 1916.

The Court: I have reached the conclusion that we will dispense with the jury. My conclusion is that the plaintiff is entitled to re-

cover by direction of the Court. I do not think there is any disputed question of fact in this case. It is true that there is a disputed question of fact as to whether C. C. Slaughter had authority to sign W. B. Slaughter's name to the note, and transfers of the stock, but if it be considered that he had that authority, then there seems to be no question of fact for the jury.

There was a fictitious certificate of stock and W. B. Slaughter's name was forged to the note and transfer, so as between the Harriman National Bank and Slaughter there is no doubt in my
166 mind but what it was a fraud and the bank would have a right as long as it held the money to hold it as *as* against Slaughter. Of course, the question in this case is not whether the bank had a right to hold it against Slaughter, but whether it had a right to hold it against the Mercantile National Bank, and that is a question, it seems to me, that is to be resolved on undisputed facts, so far as I can see, and I have reached the conclusion that I have in this way.

It cannot be disputed that the original fraud was in the procurement of the loan, that is in getting it upon the false signatures and fictitious collateral. The parties to the loan originally were the Harriman National Bank and the Slaughters. The Mercantile National Bank had nothing to do with that, of course, and the primary negotiation of the loan was therefore with the Harriman National Bank, because in the inception of the transaction the other bank had nothing to do with it.

By way of illustration, if the money had been drawn out by W. B. Slaughter himself in New York after the loan had been granted him there would have been no question of where the loss would have fallen, because in that case the Mercantile National Bank would have had nothing to do with it at all. So primarily it seems to me that the Harriman National Bank should be the one to suffer the loss, it having extended the credit that it did extend on false and fraudulent considerations not offered or induced by the Mercantile National Bank.

The next question would be what subsequent facts arose that would shift the loss to the Mercantile National Bank. That requires
167 consideration of what agency it had in the transaction and what part it took in the transaction. As I see it, it was only concerned in it by reason of the fact that the Slaughters could not get a remittance of the proceeds of the loan from New York City where the loan was made to Pueblo where it was to be utilized in time to pay Mr. Thatcher before he left for California. For that reason, they being interested in the Mercantile National Bank, and in control of it, caused the money to be advanced by that bank to them on the faith of its reimbursement from the proceeds of this loan. This they did by crediting the proceeds of the loan when they were realized on, to Mr. W. B. Slaughter and giving a check to Thatcher for the proceeds in advance of discount being actually had.

The purpose of that, as I see it, and the only purpose was to enable C. C. Slaughter to pay Thatcher before he left for California, and

before he could get remittance in the regular way, and it is quite clear that it was intended only as a means of availing of the proceeds of this loan in New York.

I think the record clearly shows that the intention was that the proceeds should have been credited to the Mercantile National Bank by the direction of Slaughter at the time the loan was discounted, but through some oversight it was not done, and the first time it was credited was on February 18th.

However, I do not see that that is significant, because it is quite clear that the intention was all the time, it seems to me, to reimburse the advance made by the Mercantile National Bank, by the transfer of these funds from the credit of Slaughter to that of the Mercantile National Bank with the Harrison National Bank.

The Mercantile Bank, as I see it, unless it was a participant
168 in this fraud and purchase, got no benefit from the transaction at all. In fact it lost interest by this advance and that is the only connection I can see it had with the transaction, merely as a facility for handling the loan in New York to accomplish the purpose it was intended for, that is, to pay Thatcher for the stock.

Therefore, the money was transferred by direction of the Mercantile National Bank from Slaughter's account to that of the bank, and that transfer was accomplished and the bank was notified of it.

It seems to me C. C. Slaughter had the authority from W. B. Slaughter to direct that transfer. It seems to me the record shows that without dispute.

Of course, it does not show that he had any right to procure a fraudulent loan from the Harriman National Bank, but it shows that he had authority to finance the purchase of that stock.

For instance, by way of illustration, if there had been no fraud in his procurement of the loan from the Harriman National Bank, it would clearly have been competent for him with the authority he had from his father, in order to accomplish the purchase of this stock, to direct the proceeds to be transferred from his father's account to the Mercantile National Bank's account, it having advanced the money for that purpose to Slaughter to pay Thatcher, so it does not seem to me that there is any question but what the transfer was made with the authority of W. B. Slaughter through C. C. Slaughter.

The question would be whether it is revocable or not under those circumstances.

Of course if it had been a mere transfer that was solely to
169 the benefit of the Mercantile National Bank, then I agree in your position that they would have to receive the benefit along with the burden and if the man who made the transfer had notice of the fraud, that notice would be imputed to the Mercantile National Bank, if they accepted the money, which in that case would be a pure benefit that accrued to them, without any burden. But that is not the proposition here. The money had already been advanced by the bank and they were only being reimbursed when this transfer was made, so I do not think they would take it with the

burden unless they were parties to the fraud or had notice of it in some legal way or could be charged with notice.

As I see it, it is just exactly as if after the note had been discounted W. B. Slaughter had given his check to somebody for the amount of the discount. If that check had been paid over the counter, clearly that would have been the end of the transaction and the man who would have gotten the money would have it with title as against the Harriman National Bank in spite of the fact that there was fraud in procuring the loan. The authorities are to the same effect if instead of cashing over the counter it deposited the proceeds to the payee of the check. If the Harriman National Bank had credited him with the amount of W. B. Slaughter's check they could not upset that transaction when they afterwards discovered that Slaughter had been guilty of a fraud in procuring the loan from them by false collateral and false signatures. So it seems to me that where the direction to transfer was made with authority, as I think it was here, the same situation would obtain, namely, that that transfer made on the books of the company could not be upset by the Harriman National Bank unless the evidence in the record shows one of two things, either that the Mercantile National Bank participated in the fraud or had legal notice of the fraud before the transfer was made on February 18th.

I do not think there is any evidence that the Mercantile National Bank participated in that transaction. It seems to me that it is an individual transaction so far as the record goes, purely of the Slaughters. I do not see how the bank can be connected with it at all, on the proof submitted. So I do not think there can be, in any sense, set up against the Mercantile Bank a question of the fraudulent loan or the purchase of Thatcher's stock for which that loan was intended to be used.

Then the next proposition would be whether the record shows or tends to show legal notice to the Mercantile National Bank, of the fraud that the two Slaughters perpetrated on the Harriman National Bank. Of course, undoubtedly, it shows that the President and Cashier of the Mercantile National Bank had actual knowledge of the fraud, or at least that the Cashier did, and possibly the tendency of the evidence is that the President also had actual knowledge of it; and if they had acquired it in any business which they were pursuing for the bank's interest, that would have been notice to the bank. But I think the undisputed evidence shows to the contrary; that they acquired such knowledge of fraud as they had, either or both of them, solely in individual transactions of their own, namely in negotiating this loan with the Harriman National Bank in which the Mercantile National Bank was not concerned at all, and in the purchase of this stock which was also their individual transaction.

So I do not think that knowledge acquired by them in that way could be charged to the bank in view of the fact that it would not be presumed that they would disclose that knowledge to the bank, that is, to any other responsible officer of the bank than themselves, because had they done so it would have interfered

with the plan that they had devised. In the first place, presumably the Mercantile National Bank would have advised the Harriman National Bank of it, and that would have interfered with the consummation of their plan, and of course it could not be reasonably presumed that if they were trying to accomplish a fraud themselves, upon the bank, they would have disclosed the knowledge that they had acquired in perpetrating that fraud to any other responsible agent of the bank.

You have suggested that C. C. Slaughter had no interest adverse to the bank, being a contingent maker of this note. But that does not seem to me to be true, because he was evidently the man who engineered the purchase of the stock rather than his father, so his motive was certainly adverse to the interest of the bank, because he wanted to get the stock and to get the stock he was the man that engineered this fraudulent loan. So I think clearly his interest was adverse to that of the Mercantile National Bank in this transaction.

So it seems to me that the proposition resolves itself into this, the Harriman National Bank was the bank that was defrauded by extending the credit to the Slaughters on false representations by them or one of them as to the genuineness of the signatures of the note and transfers of stock and as to the genuineness of one of the certificates of stock, that of the Silverton National Bank, and that the Mercantile National Bank had nothing in the world to do with that loan or with inducing the Harriman National Bank to make it, and therefore could not be made responsible for the loss in the absence of a showing in the record that they either participated in the
 172 fraud or had legal notice of it through knowledge of their officers acquired in pursuance of the bank's business or under such circumstances as the law would presume would be disclosed to the bank. I do not think the record shows either and therefore it seems to me the plaintiff is entitled to recover.

Mr. Kraus: There is a long line of cases that hold that where a forged paper is discounted or raised paper is discounted by the bank, that the bank may follow the proceeds that it paid out into the hands of even the innocent party. Take, for instance, one case that I showed your Honor this morning, where the forged draft was executed.

The Court: Which case is that?

Mr. Kraus: The case I handed to your Honor (showing book to the Court). There are any number of cases that hold that where forged paper is discounted the proceeds may be followed into the hands of the innocent party.

The Court: I am quite clear in my own mind on this matter. I may be in error about it, but I am quite clear in my own mind that the conclusion I have reached is the only one that I could come to.

Mr. Kraus: There are cases there, it seems to me, that hold the contrary doctrine, especially as to the knowledge of the bank where an officer participates in a fraud of this kind. There are two cases I cited, one where the cashier stole some securities that had been deposited.

The Court: That has been decided in my circuit so often, and I

have decided it myself in the circuit so often, that where the party is adversely interested in the sense that he is accomplishing a fraud on his principal or a fraud that he would not be presumed to disclose to his principal, that that is not knowledge to his principal, that I feel committed to that proposition.

Mr. Gibboney: That has been held in the Circuit Court of Appeals here within a month's time, in the case of Wagner vs. Stallo, the Mount Vernon Bank case.

The Court: In this case it is clear that it would be contrary to the natural presumption that Mr. C. C. Slaughter would have disclosed to any other agent of the bank outside of his father if he was permitted to enter into the conspiracy, the fact that he had acquired this loan from the Harriman National Bank by fraud, at any rate until he got the money away from the clutches of the Harriman National Bank.

Mr. Kraus: These people were the executive heads of the bank. There is no other way to charge the bank with knowledge except the knowledge that comes to the executive heads.

The Court: Yes, if Mr. Slaughter had told the Assistant Cashier, Grisard, these facts that would have been a different proposition itself, not being engaged in any enterprise that would presumably keep him from making use of it in the interests of the Mercantile National Bank. But that is not the case. C. C. Slaughter was interested in keeping it from the Mercantile National Bank, that is from keeping the Mercantile National Bank from taking the action on it that they should have taken by reason of his adverse interest to the Mercantile National Bank on this loan from the Harriman National Bank and the purchase of the stock.

Mr. Kraus: It seems to me that C. C. Slaughter was mostly interested in getting this money from the Harriman National Bank so as to reimburse the Mercantile National Bank, naturally.

The Court: It seems to me he was interested entirely in getting the money to Thatcher and in doing that he accomplished a fraud that the evidence does not show that his father knew of. I do not believe his father knew of the certificate of the Silverton National Bank from the record. He is the one that accomplished that fraud.

Mr. Kraus: But he took the money originally of the Mercantile National Bank to buy the stock from Thatcher. His interest after that was to receive this money from the Harriman National Bank so as to reimburse the Mercantile National Bank. The Mercantile National Bank directly benefited by the fraud that he accomplished. We could have refused to loan that money after we received the collateral.

The Court: I think the natural assumption would be that he kept the fraud from everybody because he would subject himself to criminal liability by disclosing it to any one.

Mr. Kraus: Will your Honor take a brief.

The Court: You can make a motion for a new trial. That is the best way to get at it. I will direct a verdict in favor of the plaintiff.

Mr. Gibboney: If your Honor please, I would like to have the

counsel for the defendant stipulate, if he will be good enough to do so, the amount of interest to date is \$2,100. The amount stipulated day before yesterday was \$2,090. It is now \$2,100.

Mr. Kraus: Yes, there is no question about it.

Mr. Gibboney: If your Honor please, there being in our opinion no question of fact to be submitted to the jury we ask for the direction of a verdict in favor of the plaintiff for \$30,000 with interest thereon from April 2, 1915, amounting to \$2,100, making a total of \$32,100.

The Court: All right. The views I entertain of the case compel me to take that action. I will direct a verdict for the plaintiff for that amount.

175 Mr. Kraus: I except to your Honor's ruling, and I ask your Honor to direct a verdict in favor of the defendant.

The Court: I will overrule your motion and give you an exception.

Mr. Kraus: I made a motion last night to dismiss the complaint.

The Court: You may put your motions on the record in such way as you desire. I will give you that privilege.

Mr. Kraus: I except to your Honor's direction of a verdict in favor of the plaintiff and refusal to dismiss the complaint. I now move for a new trial on the law and on the facts.

The Court: I will give you an opportunity to file a brief according to your request.

PLAINTIFF'S EXHIBITS.

Plaintiff's Exhibit 1.

Certified Copy of Appointment of Francis A. Chapman as Receiver of Mercantile National Bank.

Plaintiff's Exhibit 2.

Certified Copy of Appointment of Harry H. Seldomridge as Receiver of Mercantile National Bank.

176 Plaintiff's Exhibit 3.

New York, N. Y.,

Feby. 17, 1915.

Merc. Natl. Bank, Pueblo Colo.:

Checks presented your account appears to be overdrawn \$8000.00. Have you remitted to cover overdraft. Slaughter's personal balance is 30,000. Did you intend loan proceeds for credit bank wire

THE HARRIMAN NATL. BANK.

1247PM

Plaintiff's Exhibit 4.

Mercantile National Bank Letterhead.

February the Twenty Second, 1915.

Mr. Thos. B. Clarke, V. P. Harriman National Bank, New York City.

DEAR MR. CLARKE: I have your favor of the 18th in reference to the \$30,000.00 placed to the credit of W. B. Slaughter and desire to state this is to confirm our telegram to you of late date, requesting this money be placed to the credit of the Mercantile National Bank for the use of W. B. Slaughter, and we are crediting like amount, as we understood this was our original instructions to you but upon investigation find that such was not the case.

177 This letter will also be your authority to charge the Mercantile National Bank's account \$6.00 to cover revenue stamps which you placed on the note.

Thanking you very kindly and regretting you were caused any annoyance on account of improper instructions, I remain,

Yours very truly,

C. C. SLAUGHTER, *Cashier.*

C. C. S./b.

Plaintiff's Exhibit 5.

Harriman National Bank,

Fifth Avenue and Forty-Fourth Street.

New York, Feb. 25, 1915.

Mr. C. C. Slaughter, Cashier, Mercantile National Bank, Pueblo, Colo.

DEAR SIR: In accordance with your instructions of February 22nd, we beg to advise you that we have charged your account \$6.00 in payment of Revenue Stamps on loan for \$30,000 made to yourself and W. B. Slaughter on February 10th, 1915.

Very truly yours,

THOMAS B. CLARKE, JR.,

Vice-President.

178

Plaintiff's Exhibit 6.

April the Second, 1915.

Harriman National Bank, New York City.

GENTLEMEN: As this bank is now in the hands of the Comptroller of the Currency, I beg to request that you send me draft on New

York payable to the order of the Treasurer of the United States, for the balance due this bank from your bank.

Kindly give this your immediate attention in order I may report the same to the Comptroller of the Currency.

Very truly yours,

FRANCIS A. CHAPMAN, *Receiver*.

F. A. C.-b.

Plaintiff's Exhibit 7.

Harry H. Seldomridge, Receiver Mercantile National Bank, Pueblo, Colorado.

June the Nineteenth, 1915.

Mr. Jos. W. Harriman, President Harriman National Bank, New York City.

DEAR SIR: Having succeeded Mr. F. A. Chapman as Receiver of the Mercantile National Bank of Pueblo, I hereby make a
179 demand upon the Harriman National Bank for the payment of \$30,000.00 balance due us from your bank according to the books of the Mercantile National Bank.

Kindly forward remittance promptly and oblige.

Yours very truly,

(Signed)

H. H. SELDOMRIDGE, *Receiver*.

H. H. S.-b.

Plaintiff's Exhibit 8.

Harriman National Bank,

Fifth Avenue and Forty-Fourth Street.

New York, March 24, 1915.

Mr. W. B. Slaughter, President Mercantile National Bank, Pueblo, Colo.

DEAR SIR: We beg to acknowledge receipt of your wire instructing us to cancel authority of C. C. Slaughter on matters pertaining to your account with this bank. We have accordingly cancelled his signature on file with us, and enclose new cards upon which kindly favor us with signatures of those authorized to sign on behalf of your institution. In connection with the signature of W. E. Grant for the Cashier, kindly provide us with resolution of your Board of Directors authorizing same.

Thanking you for your kind attention to these matters, I am

Very truly yours,

JOHN A. NOBLE, *Cashier*.

180

Plaintiff's Exhibit 9.

Western Union Telegram.

Pueblo, Colo., 5:17 P. M., March 23, 1915.

Harriman Nat. Bank, N. Y.:

Also granting C. C. Slaughter as an officer of this bank as of date today resigned.

W. B. SLAUGHTER,
President Mercantile Natl. Bank.

Translation.

Cancel authority C. C. Slaughter as an officer of this bank as of date today resigned.

Plaintiff's Exhibit 10.

Harriman National Bank,

Fifth Avenue and Forty-Fourth Street.

New York, February 10th, 1915.

Personal.

Mr. W. B. Slaughter, Mercantile National Bank, Pueblo, Colo.

DEAR MR. SLAUGHTER: I have your letter of the 7th instant, enclosing note for \$20,000., with 400 shares First National Bank of Silverton, Colo., stock and 500 shares Mercantile National Bank of Pueblo, Colo. stock as collateral. The same has been placed to your credit here as requested.

Kindly send us your check for \$6.00 in payment of revenue tax and at the same time please sign and return to us the enclosed signature cards.

I note your intention regarding the consolidation of the two banks and cannot offer you any suggestion at the present time on matters that you have undoubtedly covered. We would be very glad to be of assistance to you and will be pleased to have the accounts you refer to when it suits you and it is convenient for you to place them with us.

Very truly yours,

J. W. HARRIMAN, *President.*

Plaintiff's Exhibit 11.

February 10th, 1915.

Personal.

Mr. C. C. Slaughter, Mercantile National Bank, Pueblo, Colo.

MY DEAR SIR: In accordance with instructions received from Mr. W. B. Slaughter under date of February 7th, we have today credited his account with proceeds of note for \$30,000., secured by 400 shares First National Bank of Silverton, Colo. stock and 500 shares
182 Mercantile National Bank of Pueblo, Colo. stock, subject to his draft.

We make this notification to you because of the fact that you are the joint maker of the above note for \$30,000., with Mr. W. B. Slaughter.

Very truly yours,

J. W. HARRIMAN, *President.*

Plaintiff's Exhibit 12.

March 25, 1915.

Harriman National Bank, New York City:

Mail statement of our account at close of your business March 25th; also statement of all obligations of this bank with your bank. All guaranties of this bank, its officers or directors covering transactions subsequent to this date are hereby cancelled and revoked.

W. D. GRISARD,

Assistant Cashier Mercantile National Bank.

ROBERT GRANT.

183

Plaintiff's Exhibit 13.

Western Union Telegram.

Pueblo, Colo., March 29, 1915.

Harriman National Bank, New York, N. Y.:

The Mercantile National Bank of Pueblo has suspended business. Its affairs have been turned over to the Comptroller of the Currency and the undersigned is now in charge. Transact no further business concerning this bank or its funds until you receive further order from the Comptroller or his authorized representative.

GEORGE W. GOODELL,

Examiner in Charge.

Plaintiff's Exhibit 14.

Bankers Trust Company,

Slaughter Building, Dallas, Texas.

Office of W. B. Slaughter, President.

November Twenty-seventh, 1913.

Mr. C. C. Slaughter, Pueblo, Colorado.

DEAR CONEY: Your letter of the 25th in regard to the Post Office matter you have had up with Mr. Bellesfield before me, and
184 in reply to the same will say that you had better handle this matter from the Bank. It might not sound good to Senator Thomas for me to write him from here; hence the importance of you writing him from there and signing my name.

So far as buying the Government Bonds is concerned, I am of the opinion when the Currency Measure passes these bonds we have will be sold at a loss, or, in other words, they will depreciate in value, and this Bond business is a matter that you had better study carefully. However, I shall leave the entire matter to your good judgment.

Would be pleased if you would send me a copy of the letter you write Senator Thomas and also Burleson, but handle it from home.

Hoping everything is coming on nicely and with kindest personal regards to each, I beg to remain, as ever,

Your Dad,

W. B. SLAUGHTER.

W. B. S./F.

Plaintiff's Exhibit 15.

December the Second, 1913.

Mr. W. B. Slaughter, Dallas, Texas.

MY DEAR DAD: I have your favor of the 27th and before the same reached me I had previously taken the matter up with Mr.
185 C. E. Thomas and I am herewith handing you copy of the same, which I will ask you to return to us for our files after you have read the same, for this is the only copy we have. The thought struck me the same as you, that when we were offered this Post Office account it would require a large outlet of money for Government bonds. However, we will only have to take such an amount as we would want. That is, say about \$5,000.00 of bonds and remit the balance each day. I believe this would be a good advertisement. At the same time I wrote Senator Thomas I also wrote our correspondent in Chicago and am today writing our New York cor-

respondent, getting their views as to how would be the best way to handle this, or would they advise us to consider the same.

Just at this time we would hardly feel justified in making investments in Government bonds. They are at 96 I understand this morning. I signed my own name to this former letter but as soon as I hear, I will have Will Wheatley sign your name and write him more fully.

I have made no headway regarding our taking on the First National Bank building for the reason I do not believe George Meston will surrender the present lease to us under any consideration and I explained to Mr. Middlekamp we would not care to make a trade with him for his bank building pending our getting away from Meston as it would cause hard feelings and we might be forced to stay here for some time.

I also notice, you have paid Charlie Williams for automobile fees which I believe is a good idea.

Trusting everything is coming along nicely with you, I am,

Yours son,

— — —

186

Plaintiff's Exhibit 16.

Bankers Trust Company,

Slaughter Building,

Dallas, Texas.

Office of W. B. Slaughter President.

December the Fifth, 1913.

Mr. C. C. Slaughter, Cashier, The Mercantile National Bank, Pueblo, Colorado.

DEAR CONEY: Your letter of the 2nd with copy of letter to Senator Thomas received and contents noted.

In reply to the same will say that it is not best for me to write to Thomas from here. You can have the letters written from Pueblo and have more effect.

I notice that you are having severe snow storms in Colorado. I presume they have reached down to the Panhandle, but have not heard from there. We have had incessant rains here for the past six weeks.

I think your mother and the baby will start home next Sunday week, and I will try and get there the last of the week, if possible, I don't know just at this time where I will have to go before going to Colorado. I am likely to be called to some distant place and if I am I will go from there on home.

I presume our steers are in the feed lots at Elk City this morning and that I will hear from them during the day.

Hoping everything is coming along nicely, I beg to remain, as
ever,

Your Dad,

W. B. SLAUGHTER.

P. S.—I herewith return you the Thomas letter.

W. B. S.

187

Plaintiff's Exhibit 17.

The Silent.
Waverley.

The Waverley Company.

Indianapolis, Ind, 11/27/12.

O. K.

C. C. S.

Charge to W. B. Slaughter.

At Sight Pay to the order of Mercantile National Bank \$2,760.00
12.90

\$2,747.10

Twenty seven hundred sixty & 00/100 Dollars.

Value received and charge to account of (Stamped 14460.)

THE WAVERLEY COMPANY,

By E. K. SHUGERT, *Cashier*.

To C. C. Slaughter, Pueblo, Colo.

(Stamped, Paid 12/21/12.)

Plaintiff's Exhibit 18.

Mercantile National Bank.

Pueblo, Colorado, 7/31/13.

Debit W. B. Slaughter By C. C. Slaughter on a/c Draft on Denver
Nat'l. Bank 20,000.

(Stamped, Paid 7/31/13.)

188

Plaintiff's Exhibit 19.

The Mercantile National Bank of Pueblo.

United States Depository.

Pueblo, Colo., 11-18-11.

Pay to the order of Mercantile National Bank \$827.05 Eight hundred & Twenty-seven & 05/100 Dollars.

W. B. SLAUGHTER.

C. C. S.

Bill of lading car cake.

Car # 25337—600 coke

big x cattle.

(Stamped, Paid 11/28/11.)

Stamped on face "Counter Check."

Plaintiff's Exhibit 19a.

The Mercantile National Bank of Pueblo.

United States Depository.

Pueblo, Colo., Jan. 16, 1912.

Pay to the order of W. S. Walpole \$5000 Five Thousand no/100 Dollars.

W. B. SLAUGHTER.

C. C. SLAUGHTER,

By C. C. S.

For Phone stock.

(Stamped, Paid 1/17/12.)

Stamped on face "Counter Check."

Endorsed: First National Bank. Paid Jan. 17, 1912. Clearings Pueblo, Colo.

189

Plaintiff's Exhibit 20.

Jan. 10th, 1912.

Personal.

Mr. C. C. Slaughter, Cashier, Mercantile National Bank, Pueblo, Colorado.

DEAR MR. SLAUGHTER: Your letter of the 4th instant just received, enclosing joint note made by your father Mr. W. B. Slaughter, and yourself, for \$25,000 maturing May 1st, 1912, and secured by 200 shares First National Bank, Dalhart; 70 shares, Silverton National

Bank, Silverton, Colorado, and \$20,000 bills receivable, being two notes of \$10,000 each, made by C. E. Oakes and Charles E. Oakes.

I note your remarks in your letter relative to this paper and concur with you in the hope that our relations entered into will be most harmonious and satisfactory, and to this end I have wired you as follows: which I hereby confirm:

"Letter Fourth and enclosures received, but not in accordance with understanding. See my letter December 27th. Neither Stratford Bank nor Mercantile Pueblo Bank stock included in collateral, nor information regarding the character, worth and standing of makers of receivables. Best to start right always, then no misunderstanding. Am writing you fully tonight. Do nothing until you receive my letter."

We are very desirous of doing business with you, but it must be according to the terms agreed upon, and as outlined in our recent interview and correspondence. If you will refer to my letter of December 27th, you will find that I stated we would be pleased to extend a loan of \$25,000 secured by stock of the First National Bank of Dalhart, the First National Bank of Stratford, and some of the stock of the Silverton National Bank, together with receivables to the amount of \$20,000 and that upon receipt of your note duly executed and collateral with stock and securities above mentioned we would discount same and credit the amount to the Mercantile National of Pueblo, now opening with us, with the proceeds and for your personal use.

By referring to the proposition agreed to by Mr. Jones of the Park Bank, under date of October 16th, a copy of which letter you allowed me to retain, I find that you offered two hundred and fifty shares of the First National Bank of Dalhart, and twenty-five shares First National Bank of Stratford, and that you were also to send us information respecting the character, worth and standing of the maker or makers and endorser or endorsers of the receivables lodged as additional collateral, and which we now find to be the two notes of \$10,000 each, above described.

While we do not question the value of the stock of the Silverton National Bank, we would much prefer that the original arrangement be adhered to, and to that end we would request that you send us the additional fifty shares of First National Bank of Dalhart, which we will retain and also the twenty-five shares of the First National Bank of Stratford which you have entirely neglected to enclose;

and we will also take advantage of your offer to send us stock of the Mercantile National Bank to the amount of \$10,000.

This is no reflection whatever upon the security which have now offered us, but as the matter has been accepted in this shape we would much prefer that the transaction go through as agreed.

I find, in looking over the collateral, that although we asked particularly that the bank shares you forwarded should be in negotiable form, duly signed and witnessed, I return to you Certificate No. 75 for twenty shares of First National Bank of Dalhart in the name of W. B. Slaughter, but which has not been witnessed; also Certificate No. 29 for seventy shares of Silverton National Bank

stock, in the name of W. B. Slaughter, which is endorsed and witnessed in lead pencil.

In returning these in proper shape, together with the stock of the First National Bank of Stratford and stock of the Mercantile National Bank of Pueblo, please do not forget to give me all information which you have regarding the makers of the receivables, which you have forwarded to us in conjunction with the above described collateral.

I enclose you new note for \$25,000 maturing May 1st, 1912, secured by 250 shares First National Bank of Dalhart, Texas, 25 shares First National Bank of Stratford, 70 shares of the Silverton National Bank, Silverton, Colorado, and two notes of \$10,000 each maturing January 13th, 1913, made by C. E. Oakes and Charles E. Oakes, jointly.

Upon receipt of this new note and the collateral we are enclosing herewith, returned in proper shape and accompanied by the required collateral described, it will be our great pleasure to place the proceeds of this accommodation to you to the credit of the Mercantile National Bank of Pueblo, for the personal use of Mr. W. B. Slaughter.

Very truly yours,

— — —, *President.*

P. S.—Money upon this kind of an obligation is certainly worth 6%. Please fill in the note the number of shares of the Mercantile National Bank stock, informing us in your letter, of the book value.

Plaintiff's Exhibit 21.

Mercantile National Bank, Pueblo, Colorado.

April 29, 1912.

Harriman National Bank, New York City, N. Y.

GENTLEMEN: I received in this morning's mail a notice that my note of \$25,000.00 would be due on May 1.

I was of the impression that this note would not be due until May 10 so I immediately wired, asking for an extension until May 25, which I hope you will see your way to grant.

I presume that you are aware that we have had an unusually severe winter, and as a general rule we contract our steers for April delivery, but on account of this winter being so severe and the cattle being so thin that they are not able to be shipped to Kansas until the latter part of May, while I have contracted my steers for delivery May 20, I do not believe I will get them on board the cars until May 25th. I am selling something like 75000 and will be in position to meet the note without fail on

that date. However, if this is not in accordance with your wishes, I will arrange to pay when due, on May 1st.

Thanking you very kindly for past favors, I am,

Yours very truly,

(Signed)

W. B. SLAUGHTER,
By C. C. SLAUGHTER.

W. B. S.-a.

Plaintiff's Exhibit 22.

Postal Telegraph (Telegram).

Pueblo, Colorado,

April 29th, 1912.

Harriman National Bank, New York:

Abaco will you flasket swatched envib colden will deliver my steers May twentieth answer. Writing fully.

W. B. SLAUGHTER.

(Translation.)

Will you allow extension of 25 days' time loan will deliver my steers May twentieth answer writing fully.

194

Plaintiff's Exhibit 23.

Mercantile National Bank, Pueblo, Colorado.

May 3, 1912.

Mr. Jno. A. Noble, Cashier, Harriman National Bank, New York City, N. Y.

DEAR SIR: I have your favor of the 29th, enclosing note for W. B. Slaughter and my signature. I beg to advise that Mr. Slaughter is at present in Texas, and I have signed the note and forwarded to him for his signature, and I presume it will reach you sometime the early part of next week.

I am writing so you will know the cause for delay.

Thanking you for your kindness in granting us this extension, I am,

Yours very truly,

(Signed)

C. C. SLAUGHTER, *Cashier.*

C. C. S.—A.

195

Plaintiff's Exhibit 24.

Mercantile National Bank, Pueblo, Colorado.

May 3, 1912.

Harriman National Bank, New York City, N. Y.

GENTLEMEN: I herewith enclose note for \$25,000.00 properly signed by my son and self, and also check on yourself for \$343.75, interest to May 1st.

Trusting this reaches you promptly, and causes you no inconvenience, I remain,

Very truly yours,
(Signed)

W. B. SLAUGHTER.

C. B. S.-A.

Enc.

Plaintiff's Exhibit 25.

Western Union Night Letter.

Jan. 19, 1915.

Judge W. B. Slaughter, Slaughter Building, Dallas, Texas:

You will receive my letter in morning regarding Silverton proposition very essential we act immediately and am unable do anything without your advice and assistance believe we should buy
196 rather than sell on account of other parties quick assets so come Pueblo immediately and we can decide which is best for our interests when price is made Answer quick.

C. C. SLAUGHTER.

Charge Mercantile Natl. Bank.

Plaintiff's Exhibit 26.

January the Eighteenth, 1915.

Mr. W. B. Slaughter, Dallas, Texas.

MY DEAR DAD: I am just in receipt of a telegram from Bill Crabtree stating he will come as soon as the roads are good, which I presume will be in the next day or two, as the weather has turned off very nicely.

I have been giving Silverton matter considerable thought and as I wrote you heretofore, I am not entirely satisfied with conditions and as you will remember some time ago when you were coming down on the train one time with Mr. Thatcher from Denver, I believe it was at the time you attended the currency association of the

Denver, Colorado Springs and Pueblo Banks, the matter came up between yourselves regarding the purchasing of his bank or selling ours and with this end in view I met Mr. Trotter on the car the other day and asked him why he did not buy our bank or make us a price that would be acceptable to us for his bank.

197 The result was he telephoned me today to drop in on my way to the Grand Jury, which I did and had a very pleasant talk with Mr. M. D. Thatcher and he has virtually agreed to either sell or buy, he naming the price, and of course as I had no authority to trade, it was merely a tentative proposition.

Now, I think it is best to either buy their bank or sell ours but before we would make an important deal like this I would want you on the ground here in order we can go over the situation. As you will remember we have owned this bank for something over three years and it has never paid us any dividends, hence, if we could buy his bank it would be a dividend payer providing we could get the proper authorities to run it, etc.

I am herewith handing you statement of his bank received this morning, the loans amounting to \$190,000 of which \$60,000.00 consists of certificates of the First National Bank. You will furthermore notice the bonds are \$102,000.00 which Mr. Thatcher assures me he purchased individually for this bank as an investment and I believe what he tells us we can rely on, but naturally we would want to know what our prospects are before we make a deal like this.

It may be I will wire you to come to Pueblo any time next week for if we do business we have got to do it in the next ten or fifteen days for he makes his yearly trip to California. Of course, this information must be kept absolutely confidential as I have assured Mr. Thatcher under no circumstances would we give it out, consequently do not mention this to any one.

We would naturally want to go over the situation and I have today written Mr. Smith for full information regarding the
198 other bank, stating we wanted to look up the statistics of the two banks. Hence, if I wire you you want to be sure and come without fail, as it is very important as we possibly will never have another opportunity of selling or buying under such favorable terms again.

You will receive this letter Thursday morning without fail as I am sending it special. Consequently if you get a wire you will know what it is about.

Will not write any more now as it is very late and I have just come from the Grand Jury.

As ever, your son,

Plaintiff's Exhibit 27.

January the Twenty Fifth, 1915.

Mr. W. B. Slaughter, Dallas, Texas.

MY DEAR DAD: I am just in receipt of your favor of the 23rd and of course regret very much you have such a severe cold and trust by the time this letter reaches Dallas you will have fully recovered. Desire to state we have been having fine weather in Colorado. In fact we drove to Colorado Springs yesterday afternoon leaving about 3:30 and got back about 7:00 in the evening. We had the open car and did not feel the cold at all. However, it is snowing this morning but not very chilly.

199 I have written you fully regarding the Thatcher deal but

I have not at this time done anything regular in the matter. In fact at the time he was talking about the matter, he seemed to be of the opinion we should keep one of his men for a short time which I agreed to do, as he claimed it was more or less of a responsibility in transferring a bank on account of the National Banking Law. I told him we would be very glad to have him remain on the Board of Directors for six or nine months if he cared to do so. While of course, I do believe it will be to our advantage to keep one or two of their men for six or nine months until we get thoroughly familiar with the conditions.

If the two banks can be put together and made pay it seems to me it can be made a paying proposition. Furthermore, figuring his capital stock on a basis of \$1.40 would make it worth \$70,000.00 and we now have an investment up there of something like \$30,000.00 hence there would only be an outlay of something like \$35,000.00. Of course, I suppose it will take two or three weeks before we absolutely get the correct data. It is very essential that I see you and go over the matters but I presume I can arrange to come to the cattle convention at El Paso which I believe is along about the first of March and we can talk matters over thoroughly; or, if I cannot get off, you can return by Dalhart and I can meet you there.

I notice what Mr. Wright says in regard to the Oakes business and it seems to me you are on the ground and president of this bank and have full authority to act. My idea was to get hold of the stock in his store if possible. Mr. Wright knows the situation very fully

and naturally we should follow his instructions. You now
200 have the stock securing Mr. Oakes' note in your possession
and I will send the note to you and you can take whatever
action you desire.

Do not believe I have written you that we have been designated depositary for the Southern Ute Agency. We are forced to put up a surety bond for this of \$55,000.00 with them and they are to deposit like amount with us. We will pay 3½% on daily balances and time deposits. The money costs us \$5.50 a thousand. I have al-

ready furnished the bond and presume I will receive the deposit in the next few days.

I am very much surprised my mother's furniture has not begun to arrive as I paid Mr. Calkins for this some few days ago and presume it will put in appearance before this.

I notice you enclose the notification of your income tax and desire to state I will make up your income tax in accordance with the statement of last year and forward to you immediately in order you can sign and send to the Internal Revenue collector in Texas. Last year we sent this to Mr. Skinner at Denver, but you are now a resident of Texas and I will write Mr. Skinner to this effect.

I neglected to send a copy of letter I wrote to Mr. Goodell the other day. Please return this copy when it has served its purpose. Up to this time I have not communicated with Mr. Goodell regarding the Silverton National Bank, as I did not want to take the matter up until I was sure we would make a trade with Mr. Thatcher, as there is no use running head long into this agreement until we are thoroughly satisfied *as we* not going to get the worst of it. Do not believe there is any additional news to write.

Your son,

201

Plaintiff's Exhibit 28.

February the Eighth, 1915.

Mr. W. B. Slaughter, Dallas, Texas.

MY DEAR DAD: I am in receipt of your favor of February 6th and also one from Mr. Oakes, which I am herewith enclosing. Of course, I trust your suit will accomplish the desired result but as I have heretofore stated, I am rather of the opinion you will not accomplish anything and liable to do Mr. Oakes considerable injury, and furthermore, we are at this time, getting the interest on the money which may cease since this suit has been started. But of course, I have a letter from Mr. Wright who seems to think it is the thing to do and naturally we have to be governed by what our legal advisers may think best.

I notice what you state with reference to the Silverton National Bank and I hardly agree with what you have to say. I have not thoroughly made up my mind just what we will do after the banks have consolidated. I desire to advise I have gone into the details of the First National Bank very thoroughly and find the most they have ever had loaned at any time has been \$60,000.00 and this was to the best operating companies and upon approved security. It seems that whatever the First National Bank refused our bank would take up. In fact, in the future I am going to have a man who will not loan to anyone only on approved security. While I have not gone into all details but I am satisfied conditions are about as represented.

202 Mr. Allen, the Assistant Cashier, came in yesterday and I am very much impressed with his way of doing business as he seems to — very cold-blooded and his ideas seem to be about the same as mine—that no loans should be made in Silverton, except to very large companies and then only on approved security. I will make up a list of the loans in the next day or two and you can see for yourself how the bank has been conducted.

However, the bank did suffer a loss of \$5,000.00 last year by the Muscoteen Lumber Company which was owned and controlled by Mr. Hudding of Saint Louis and these were his brothers who were operating the lumber Company. This loaned was charged off on January 1st and it was determined bad about November. In fact, I believe the bank is very clean.

In regard to the Great Northern bonds which they hold about \$10,000.00 worth, they have a market value of about 80 and they are carried on the books at about 90. However, they are making arrangements for a reorganization and I believe it will pan out all right.

I have not had a line from Mr. Smith in answer to my letter of February 3rd in regard to the assessment on the bank. It seems he is running things just about to suit himself and I am very frank to admit if he does not do better, we will be forced to remove him after while, even if it is before they consolidate.

Do not believe there is any additional information to write.

As ever, your son,

C. C. S.-b.

203

Plaintiff's Exhibit 29.

February the Seventeenth, 1915.

Mr. W. B. Slaughter, Slaughter Building, Dallas, Texas.

MY DEAR DAD: I am just in receipt of your favor of the 15th, and have read and noted contents very carefully. As before stated, I think Mr. Werkheiser is the man we should retain. While in all probabilities we will be forced to pay him at least \$200.00 a month but the salary does not cut very much figure in view of the uncertainty of security in Silverton and furthermore a review of his banking experience in Silverton shows a very small loss. Of course, they did lose \$5000.00 last year but this was no fault of Mr. Werkheiser's, as the paper was all bought by Mr. Thatcher and retained by him in Pueblo and the Silverton bank was in no way to blame.

I am writing him today covering all these points and while he is possibly well up in years but he is a very safe and conservative man. I believe I sent you a statement of his loans which showed he has less than \$50,000.00 loaned in Silverton and we, with our little \$25,000.00 bank, had practically double this amount. I am enclosing a copy of the letter I am writing him today and also his letters to me, which explain themselves and as I have heretofore written you, I think you had better arrange to be in El Paso Sunday night, or early

Monday morning one day before the convention starts, so we can go over these matters without interfering with your plans.

294 I furthermore note you have written your good friend Mr.

Harnell with reference to securing rooms for Eloise and myself. Desire to state there is a young lady, Miss Dorothy Bragdon, accompanying us, who is going on to California. It might be, she and Eloise could occupy the room and I could get a room elsewhere. I furthermore note if no other arrangements can be made you will let us have your room at the Sheldon, which is very gratifying.

I am also enclosing letter from Mr. Smith which explains itself, also a letter from Mr. Pitcher which fully covers the point. It seems they are of the opinion that Smith is going to continue. I think if we cannot get Mr. Werkheiser Mr. Smith might be all right. I am writing Mr. Cunningham a nice letter to-day and also Mr. Pitcher. Incidentally, I will mention Mr. Werkheiser may be a little sharp and cranky but you can see from the statement I sent you he is very conservative and has the absolute confidence of the people in money matters in Silverton, and of course, this is what draws money to a bank. However, I believe we can make some loans in Texas in cattle and get this bank to paying 15 or 20%.

I trust you will approve of my having Mr. Werkheiser come to El Paso, as above stated, I think a personal interview is absolutely essential. I also note you are still looking at Farns and trust you will be able to make a deal that will be entirely satisfactory. I also note what you say with reference to Will Grissard and I have told him to go ahead and build the house and we will arrange to take care of his money affairs. However, I think it will be much better for

295 you to handle these matters in Dallas but these are things we can go over when I arrive.

Mr. Jesse Reed and his wife and cousin leave for California in their car in the morning. I have also consented to let Mrs. Bragdon and her two daughters go through in mine and she is to pay all expenses, which gets the car to California without much expense to me.

Do not believe there is any news to write. With love to all, I remain,

As ever, your son,

C. C. S. A.

Plaintiff's Exhibit 30.

A. 250. H 11 Collect K. H. S.

Dallas, Tex., Jan'y. 20, 1915.

C. C. Slaughter, Cashier Mex. Natl. Bank, Pueblo, Colo.:

See letter today impossible for me to come just now.

W. B. SLAUGHTER.

947 A. M.

Plaintiff's Exhibit 31.

Bankers Trust Company,

Slaughter Building,

Dallas, Texas.

Office of W. B. Slaughter, President.

January 20, 1915.

Mr. C. C. Slaughter, Pueblo, Colo.

DEAR SON: I have just read your wire in regard to the Silverton National Bank matter, and in reply will say that it is useless for me to come. Whatever you think is best in the matter will be done anyway, and you realize I have been South all Winter, and if I should now be forced to go to Colorado as cold as it is, I would no doubt get a severe cold and it might go bad with me just at this time; hence, on this account I am loth to come. If the weather was good and it was later in the Spring—say May—I would come at once, but you know I can't afford to take chances just now. Having Catarrh very bad, you realize how easy it is for me to catch cold when I change climates.

I haven't received your letter as yet, but I know from your wire about what its contents are; hence you do as you think best. You are always handled this, and I expect you to handle it on. If you make a mistake why you will have to stand by it. However, just as soon as I get your letter I will wire you, but I have time this morning to write you and am therefore writing you to this effect.

Your mother and Dorothy are both well, as well as the writer. With best wishes to you and your family, I beg to remain,

Your Father,

W. B. SLAUGHTER.

W. B. S./W.

P. S.—Since writing the above I received your Special Delivery letter, and note its contents. Now as I said before, my being on the ground would do no good. You have to use your judgment in this matter. So do what you think is best as I said before. You can't expect me to come at this season of the year, as I have made plain to you the reason I would not want to come, and when you get my age you will readily understand the reason. I would not go up there and take pneumonia for anything. This is one of the real reasons I do not want to come; besides, Stuart and C.C. have not gotten away yet, owing to the inability to get our Prospectus from the Printers. They say it will be here today, and expect to leave in the morning. I could do you no good, as your judgment will go in this matter, and I don't see how it is possible to get away, as there are many things coming up here every moment, and no one to look after them. Mr.

Wright is called out of town on so many law matters, and the business then would suffer just at this time if I should leave. We can do all this by letter as well as for me to make that long trip, and I would much prefer it if it can be done. I am wiring you to get important letter today.

I notice the statement, and whatever you think we can do
208 we will do, but I don't want to get too badly involved, as the

Regional bank is a new affair, and might not pan out just as we want it. However, I believe later on we will be able to sell all these banks to the Trust Company, for I feel sure later on they will want to get into the Banking business, and if they sell stock in Colorado—as C.C. tells me he is contemplating—they will need these banks as feeders for the Trust Company. I am looking forward to that day.

I am mailing the official signature of the officers of the bank to the Comptroller of the Currency at Washington today, as you request.

Hoping that you will adjust matters to your own liking, and it will be agreeable to you, and with best wishes I beg to remain, as ever,

Your Dad,

W. B. SLAUGHTER.

W. B. S./W.

Plaintiff's Exhibit 32.

January 25, 1915.

Mr. C. C. Slaughter, Pueblo, Colo.

DEAR SON: The Federal Reserve Manual came in this morning, and at the same time a check from you signed by Will Grisard in payment for the same. We herewith return you the check, as we feel that we can afford to pay for this ourselves as we need it. We want to thank you for your thoughtfulness in ordering this book for us.

If you make a deal for the Bank you must take Jim Mc-
209 Corkle into your confidence and see that we are thoroughly protected in every way possible. Jim can act for me in the matter, and you take him in. I will not write him about it now, but when you know the deal is going to be made I will write him a letter, if you think best, stating that I can't come and that he must act for me, and I believe that it would be better for him to act for me, and you must have a thorough understanding that Mr. Thatcher will never be connected with any Bank in the future in Silverton if one should be put in. Please throw all the safeguards you can around us if you conclude to purchase.

The Baby and myself have both been pretty nearly sick with bad cold. I am a good deal better, and I hope the Baby is also, but she was not up when I left home this morning. Today is her Birthday. She is Nine years old today. She called my attention to it yester-

day, and her Grandmother expected to give her a little party, but she being sick it will have to be put off until later.

I do not know what to say to Mr. Smith, and I am returning his letter and you can answer it as you think best. I told Smith when he was here that you were handling that Bank and he would have to look to you for the matters and not me. However, if you insist on me answering it, I am keeping a copy of the letter and will answer later on.

I herewith enclose you copy of letter received from James Brothers about their steers, and copy of my reply. They are so high I can't afford to buy them. With kindest personal regards to each of the boys, as well as yourself and your family, I beg to remain,

Your Father,

W. B. SLAUGHTER.

W. B. S./W.

Enc.

210

Plaintiff's Exhibit 33.

February 2, 1915.

Mr. C. C. Slaughter, Pueblo, Colo.

DEAR CONEY: I looked over the First National Bank statement; find they have

| | |
|--|-----------|
| Individuals | \$132,000 |
| Demand certificates, 6 months certificates, and 12 months certificates | 160,000 |

They are paying interest on over 50% of the money that is in the Bank. I don't know whether this is a good proposition or not. I haven't figured it out, but presume you have. I wrote you fully about it, and whatever you do will be satisfactory with me.

Your Dad,

W. B. SLAUGHTER.

W. B. S./W.

211

Plaintiff's Exhibit 34.

February 6, 1915.

Mr. C. C. Slaughter, Pueblo, Colo.

DEAR CONEY: Your letter of February 3rd before me, and contents noted. I notice you are holding Thatcher's matter up on account of the Bond. How many of these bonds are there? And I agree with you that you can make a blunder if you buy Railroad bonds now, because I seriously doubt them being ever worth the money he wants for them. Is it possible to get him to take the bonds out and hold them himself?

I note what you say about the Silverton National Bank, and it seems that we are always having to take paper out of that bank. Will the time ever come that we can collect any of the paper up there? It seems it is impossible to collect it, and as the Cashier makes loans and can't collect them, he had better quit making loans altogether. I am getting tired of putting up money for bad loans.

I have read your letter in regard to Mr. Smith very carefully, and as I gave him positive instructions never to leave the Bank without notifying you as to where he might be found—it seems that he paid no attention to the instructions that I gave him, and I think the time has come that a change had better be made. If Smith is away all the time and the Assistant Cashier is running the Bank, I see no reason for keeping Smith as an expense to the Bank. I still am

at a loss to know who will be a good man to put at Silverton
212 in the event you do make the deal you contemplate, and if you don't make it, and we run on you had better let Nyberg—with the assistance of a cheap clerk—run the Bank, and allow him to make no loans without your approval, and let Mr. Smith go, for he has too much outside business to look after, and in fact since he has got to speculating in mines I don't think it advisable to keep him anyway, for any man in running that bank must give his time to the Bank, and not to his own private interests. That is what has hurt our banks heretofore—we have had men employed in them who were looking after their own business when they should have been giving their time to the banks' business when the bank was paying them. Hence, in the future we must not allow any man to speculate on the outside. I herewith return Mr. Smith's letter.

Be sure and satisfy yourself about the Railroad bonds thoroughly before you close the deal.

I sent Mr. Young, Attorney,—or rather Mr. Wright sent him—over to Ardmore last night to see Mr. Oakes. Mr. Wright has been sick several days, and in fact he doesn't go out of town only on special occasions. He thinks that Mr. Young can handle the case at present as well as he could. I did not intend to convey the idea to you that James-Mickle-Schow Company had made any statement about Mr. Oakes being unable to substantiate the statements he has made in his letters to Mr. Wright. I said that the people who had bought these holdings from these people had made the statement that they did not believe he would swear to what statements he had made in those letters,—not James-Mickle-Schow Company—but the people who bought the stuff at the time it was

sold. I had a letter this morning from Mr. Oakes wanting
213 to know the individual who made the statement, but at this time I do not think it is best to discuss matters with him.

If we go to trial all these things might come up, and be to his injury as well as our own. I may have to go over to Ft. Worth this afternoon in regard to the Oakes matter. I will know when I get a phone message from Mr. Young, which I expect to get in the next three or four hours.

With best wishes to you and all the boys, as well as your family. Will say this leaves Grandma and Baby Girl well, and I am well except a very severe cold.

Your Dad,

W. B. SLAUGHTER.

W. B. S./W.

Enc.—Letter.

Have just arranged the Bond in Mr. Oakes' case for attorney is there and it is satisfactory with him; made it through a Surety Co. cost \$50.00 for 10,000 bond twice amount of note, will go to Ft. W. to see something about it this P. M.

W. B. S.

214 Plaintiff's Exhibit 35.

Bankers Trust Company,

Slaughter Building,

Dallas, Texas.

February 9, 1915.

Mr. C. C. Slaughter, Pueblo, Colo.

DEAR CONEY: Your letter of the 7th, informing me that you had bought Mr. Thatcher's interest in the First National Bank, paying him \$70,000.00 or \$120 per share, as I understand the capital is \$50,000.00. I am not sure whether this is a good buy or not, but will see as the days come and go.

I am today writing Mr. Cunningham, Vice-President of the Silverton National Bank, informing him that we have purchased the Thatcher interest, and asking his advice. Presume I will hear from him in the next few weeks. I herewith enclose you copy of my letter to him.

Yours very truly,

W. B. SLAUGHTER.

W. B. S.-W.

Enc.

215 Plaintiff's Exhibit 36.

Bankers Trust Company,

Slaughter Building,

Dallas, Texas.

February 10, 1915.

Mr. C. C. Slaughter, Pueblo, Colo.

DEAR SON: I herewith return you the report of the First National Bank of Silverton, Colorado, made to the Comptroller of the Currency, January 31, 1915, No. 1651. I am holding the other papers as you suggest.

I do not believe that Smith or Allen either one will be the one to put in the Bank at Silverton. They have been at daggers' points

no doubt, and they both have lots of enemies. Of course, it is all right to hold them there a little while, but we will have to get a good man if we possibly can, and there is too much expense there. I feel that when the two Banks are consolidated, Nyberg with a cheap clerk and the man that runs the Bank will be all that will be necessary to put there, and this being true, the Bank should make some money. Of course, you must never allow any loans to be made unless they are approved. A man will have to make his application in plenty of time for the loan to go to Pueblo and be passed on by you and someone else, before it is made. The only way to run that Bank is to run it this way and we will never have any trouble.

I wrote Mr. Cunningham as you suggested and sent you a
216 copy of the letter. Of course just as soon as matters can be adjusted I want all these expenses cut off. There is an expense at the first National Bank now that would absorb the profits of any \$50,000.00 bank from my way of thinking, viz: \$659.27 per month. I am at a loss to know how they have been paying these salaries. There is only one way to do any business and get it down on a paying basis. To be plain with you, I do not know who to get to go in that bank unless we could put someone in the little Bank at Texline and take McAvoy from there to Silverton. He might be able to run the bank as I believe he would never do anything without your approval. I do not know whether he is big enough or not, and whether he is able to cope with the situation. These are things you have got to be very particular about, and be sure and bond them when you put them up there so that if they ever do a wrong we will have some recourse. I am in hopes it will pan out all right, and that you have made no mistakes.

Business keeps piling up here from day to day, and many perplexing questions come up. C. and Bob Stuart are now here—came in this morning. I do not know how long they are going to stay. However, they did not come in regard to any business connected with the Bankers Trust Company, it was some private business of their own.

I went out and looked at the farm that I thought of trading some of my land for, but didn't like it. I am going again Saturday and will probably be away all day Sunday looking at another one. Of course, there is nothing on the farm or on the land. If we trade we will trade even—there will be no debts to assume if I trade. I won't trade unless I get a farm of that kind. They claim the one that

I am going to look at is a very fine farm. It is about Twenty-
217 five or Thirty miles from here on the M. K. & T. the other side of Cedar Hill toward Hillsboro. Saturday afternoons and Sundays are the only days I can be away from here, hence I will go out Saturday afternoon and look it over Sunday and come back to Cedar Hill Sunday night and in Monday morning.

With best wishes to you and your family, and all the boys, I beg to remain,

Yours very truly,

W. B. SLAUGHTER.

W. B. S./W.

Plaintiff's Exhibit 37.

Pueblo, Colorado, Feb. 6, 1915. No.—.

Mercantile National Bank of Pueblo.

Counter Check.

42-1.

Pay to the order of M. D. Thatcher \$35,000/00, Thirty Five Thousand and no/100 Dollars.

W. B. SLAUGHTER,
By C. C. SLAUGHTER.

Perforated: Paid *2*8*15.

Endorsements: M. D. Thatcher, First National Bank, Pueblo, Colo.
Paid Feb. 8, 1915.

[On left margin:] United States Depositary.

218

Exhibit 38.

March 30, 1915.

Mr. W. B. Slaughter, c/o Mercantile National Bank, Pueblo, Colorado.

DEAR SIR: Referring to the loan we made to you personally February 10th last, we have to advise you that the collateral thereto, on account of the failure of the Mercantile National Bank of Pueblo, is now of doubtful value.

Will you kindly, therefore, be advised that, in accordance with the terms of the collateral note on which the \$30,000.00 was loaned to you, the note is now due and payable, and the amount thereof, which we have been holding in our sundry account, as we advised you March 26th, has this day been charged against the same account, cancelling the indebtedness. We hold the collateral thereto, being Certificates Nos. 3 and 4 for 250 shares each of the stock of the Mercantile National Bank of Pueblo, and Certificate No. 109 for 400 shares of the First National Bank of Silverton, Colorado, subject to your order. The signature of C. C. Slaughter under your name on the note we consider, in accordance with your advice, to be an accommodation endorsement. If you desire to borrow on collateral other than the securities we now hold, we shall be glad to accommodate you.

Kindly send us your check for \$240.00, being the interest due up to this date on the above said note.

Regretting that the pleasant relations which existed between this bank and the Mercantile National Bank should in any way

219 be disturbed, and hoping we may again have the pleasure of doing business with you when your bank resumes, I am, with kind regards,

Yours very truly,

J. A. NOBLE, *Cashier*.

J. A. N.-W.

Plaintiff's Exhibit 39.

Bankers Trust Company,

Slaughter Building,

Dallas, Texas.

Office of W. B. Slaughter, President.

December 15, 1914.

Mr. C. C. Slaughter, Pueblo, Colo.

DEAR CONEY: I fully intended to use part of the money out of the R. L. Slaughter note to pay the note due on the Masten Street property here, but you have placed it to your Mother's credit, so I had to draw a draft on the Mercantile today on my account for \$2,154.25. There will be no more payments due on it until next July. I hope to have a building erected by that time on this property. I want to trade the R. L. Slaughter note, due in three years as part payment on it, and put in my Mineral Wells property to get the building erected. I am working to this effect, but
220 I am not sure yet whether I can accomplish it or not. Please let me hear from you as to what you think about it.

Hoping everything is moving along nicely, and with best wishes to you and your family, I beg to remain, as ever,

Your Dad,

W. B. SLAUGHTER.

W. B. S.-W.

Plaintiff's Exhibit 40.

Bankers Trust Company,

Slaughter Building,

Dallas, Texas.

January 23, 1915.

Mr. C. C. Slaughter, Pueblo, Colo.

DEAR CONEY: I wrote you that I did not feel like I should go to Colorado, and since writing you I have taken a very severe cold, and am not sure but what I will have to be confined to my room for a few days. It is awfully cold here today, and I presume it is about the same in Colorado just now.

In regard to the matter you wrote me about, will say that I do not think I could aid you any more than you can aid yourself, and it would be left to you altogether, but I want you to know
221 that you can adjust your payments before you close on the deal if you close at all.

Mr. Wright informed me that if you did not get busy on the Oakes matter you were liable to lose it. I am in hopes you are giving it your attention, or having someone else do it. Of course you can't afford to lose this amount of money on account of any carelessness on your part. You realize that I never did favor making the loan to Mr. Oakes, but told you at the time to do as you pleased. Mr. Wright also said that you were only paying his son \$60.00 per month—that his mother had a letter from him stating that this was all you were paying him. I suggest that you increase his salary to \$75.00 per month. I wrote you fully about this matter once before, but it seems that you did not heed it. For your good and mine I think you had better increase his salary, for Mr. Wright has done many things *you* for in the past, and never made any charges, hence you have an opportunity to return the kindness by increasing the salary of the son at this time, and I suggest you do it.

Your mother's furniture has not commenced arriving as yet. I presume it will in the next few days. She informed me this morning that the Painter said he would be through with the house within the next three weeks, but I seriously doubt whether he will get through before some time in March. It is so cold today I feel sure they will be unable to work, and this cold spell might continue for a week. You realize this cold would not have much effect in Colorado, as it is so high and dry there, but here where it is low and damp it cuts very badly.

I herewith enclose your notice of Income Tax. You handled this matter last year and perhaps have a record of the amount
222 of taxes I had to pay on my income, and I wish you would do the same this year. Please give this attention, as it will have to be attended to between this and March.

I hope this will find you and your family well, and everything moving along nicely. With best wishes to all, I beg to remain, as ever,

Your Dad,

W. B. SLAUGHTER.

W. B. S. W.
Enc.

Plaintiff's Exhibit 41.

January 25, 1915.

Mr. C. C. Slaughter, Pueblo, Colo.

DEAR CONEY: I just received your letter in regard to the purchase of the First National Bank at Silverton. It seems to me that the price is too much, but I might be mistaken. You don't want to buy unless you know that you can make some money by the

transaction. I am inclined to think it is a mistake us offering Mr. Thatcher the interest in the Silverton National at par. It seems to me it is too great a difference between the two. However, you are on the ground and know the situation much better than I do. \$70,000.00 is a long price I think, for the Bank, but by buying it and consolidating the two, it may make plenty of money. It is a

223 question of getting a good man to handle the Bank if we make the deal.

I don't see why you insist on me coming up there, for I told you in my former letter you could close the deal as well without me as with me, and I am almost sick with a bad cold, and do not feel that it would be justice to myself to make the trip up there.

I again advise you in regard to your Oakes matter—that you are liable to have a clear loss if you don't get busy; Mr. Wright told me he had done all he could do with it until he hears from you.

Who do you contemplate putting in charge of the First National Bank at Silverton if we make the deal? You must make no mistake in getting your man. You must get a man who is well versed in securities, and that will see that no loans are made unless we have proper security; this has been the mistakes of our men heretofore. Of course, I realize that we will make a few mistakes at best, but we must throw all the safeguards around that we possibly can.

Please write me fully by return mail. With best wishes, I remain,

Yours truly,

W. B. SLAUGHTER.

W. B. S./W.

224

Plaintiff's Exhibit 42.

January 30, 1915.

Mr. C. C. Slaughter, Pueblo, Colo.

DEAR CONEY: Your letter of the 27th regarding the Silverton Bank deal received. In reply will say that I am still at a loss to know what good I could do by coming to Pueblo. It is an expensive trip to me, and I could be of no service to you; if you make the deal you could make it as well without me as with me, in fact, I know nothing about it whatever and you know everything. I haven't given it one moment's thought, and in fact there is as much to do here as I can possibly look after, and you are in the prime of your life now, and if you can't handle deals of this kind without me now I don't know what you will do later on. I wrote you that if you made the deal take Jim into your confidence. I feel sure that the things you don't think of he will. I have but very little faith in Mr. Allen at Silverton. He is a Politician, and may have considerable influence, but he is very unreliable in every way; at least good men have told me this. It may be true that Smith is speculating; I know nothing about it. I know he must be considerably involved. I think this money he wants is to go to Mr. Thompson. I think he borrowed this money from Mrs. Thompson—at least Mr. Thompson said he did—before he went to Colorado, and they are very much

put out because they haven't got the money out of Smith, and we might be able to buy that note against Smith at a great big discount if we wanted to. He tried to get me to take it up, and I told
225 him I didn't know anything about Smith's affairs.

In regard to sending Mr. Wheatley up there, I don't know whether this would do any good or not. You know that I feel that Wheatley hasn't made good with us in many things, and I am loth to send him anywhere.

In regard to the broom factory, I want to admonish you that you had better watch out who you put in there. They may be only coming in for the purpose of getting information to use to your detriment later on. However, I am in hopes that, as you say, it will make plenty of money. You may get so many high salaried men in that broom factory it will get top-heavy, and if it does, you know that means it is bound to fall, but from your statement I presume it is all right.

Of course, it is all left with you as to whether we send Mr. Wheatley up there or not, if you succeed in making the deal for the Bank, but be sure and be thoroughly protected if you do make the deal. Your experience in buying other Banks ought to keep you from getting any pitfalls, and you and Jim have had all the trouble straightening out the other bank, and ought to be thoroughly posted—much better than the writer.

I note what you say about the car, and the amount of work it would require and the length of time it would take to get it in shape. Crabtree wrote me that the man lived here that represented the Company, but he didn't give me his name. It is very strange that he neglects to do the very things I want done. If I know who the man was that represented the Company, I might be able to see him and do something for him myself.

In regard to the cattle deal, will say that I sent Crabtree a telegram yesterday, copy of which I herewith enclose. I pre-
226 sume you have received this if he is gone, and know what I had to say. I don't think the cattle in the Carlsbad country are anything like as good a quality as the ones that are down in the Ft. Stockton and Alpine country. The cattle down there have been better bred and are much *getter* growth. They have always had good grass, and besides, I don't want Crabtree to contract for any cattle until I know positively that we have the money to pay for them. I think it is a mistake in sending him down there, but as you sent him I have nothing to say, but I do not want him to close the deals until we know that the funds are forthcoming to pay for the cattle.

So go ahead with your Silverton deal, if you want to, and whatever you do I will stand by, but I hope that it will turn out all right, and will ask Mr. McCorkle to represent me if it is agreeable with you.

In regard to the Oakes matter, I will see Mr. Wright this morning and talk it over with him. He has been sick with bad cold the last day or two, as well as myself, and I haven't had much to say to him.

I wrote Goodell fully and sent you a copy of the letter, which I presume you have by this time.

I am writing Mr. Crabtree today in care of the people you advised me to write him in care of.

I know nothing about what you speak of in regards to Gilbert Wright unless it is the proposition that I told Dela if she wanted to get in the book that we expected to get out she would have to take stock, and I presume that is what she is referring to her son.

Will say your Mother and the Baby are well. We all went out yesterday and had dinner at the Colonel's. Your Uncle
227 John and his wife, your Mother and myself, and the Colonel and his wife were there. It was the first time we have all had dinner together—the three brothers—for Fifteen years, and Twenty since the three families sat down at one table. Of course the Baby was with us. The Colonel appreciated it very much and gave us a very fine dinner.

I am sending you one of the Prospectuses by to-day's mail which we got out that the boys are using now in selling stock.

With best regards to all the boys, and hoping everything is coming on nicely with you and the Bank, I beg to remain, as ever,
Your Dad,

W. B. SLAUGHTER.

W. B. S./W.

Plaintiff's Exhibit 43.

Bankers Trust Company,

Slaughter Building,

Dallas, Texas.

February 15, 1915.

C. C. Slaughter, Cashier, Pueblo, Colorado.

DEAR CONEY: I have read your letter carefully in regard to the First National Bank, and will say that you are mistaken. I
228 had no idea of conveying the idea to you that Nyberg was the man to put in charge of the bank. I said Nyberg, with someone else. Nyberg is familiar with the workings of the Silverton National Bank, and it looks to me like it would be a good idea to have one man who is familiar with the workings of the Silverton National when the two are consolidated. It might be advisable to have Workheiser and Nyberg, with someone else, for the time being. I want the expenses cut down so that the Bank will pay from now on.

I just had a letter from Mr. Irving stating that he had sold his yearlings, and we will not get them. This is the bunch that we were figuring on buying, but I hope we will find others fully as good.

I do not believe you need an irrevocable power of attorney to act for me in the capacity you suggest in the Silverton National Bank.

I herewith enclose you power of attorney, such as I believe is necessary, and will answer all the purposes.

I also enclose you copy of letter this day sent Mr. Harrell, and I feel sure he will get you the rooms. If not, I have rooms at the Sheldon, and while it is not as fine a hotel as the other, I am perfectly willing to give you and Eloise my rooms, and I can get rooms elsewhere. It will — no trouble for me, as there will be nobody but myself, and I know I can get a room with Charley Zieger, as he is an old friend of mine, but will try my best to get you the rooms at the Paso Del Norte Hotel, as it is the hotel of the city. The reason I am stopping at the Sheldon is that the owner of that hotel has done many things for the stockmen, and is furnishing us an office now at a nominal cost, and I think that I should stop with him on that account.

229 I hope that you will get matters adjusted satisfactorily, and another thing you mention is McAvoy. I did not intend to convey the idea that McAvoy was the man to have charge of the bank, but thought in connection with someone else he would be a good man. You need young men that are active with an old head. I am in hopes that you may get these matters adjusted.

Will say I just returned from the Country looking at two farms, but you need not worry; I will not trade my land off for any farm until I know it is a good trade, and I expect to keep on looking at them as long as it costs me nothing to go and see them, and the Agent is furnishing the autos and I will take advantage of these things. I never go out until Saturday and get back Sunday night or Monday morning to the office, spending Sunday in riding over the country looking at different farms; besides it is worth much to me in other lines as the years come and go.

This leaves your mother and baby well, and with best wishes to you and your family, I beg to remain, as ever,

Your Dad,

W. B. SLAUGHTER.

W. B. S.-W.
Enc.

230

Plaintiff's Exhibit 44.

Dallas, Texas.

February 15, 1915.

To whom it may concern:

This is to certify that C. C. Slaughter is authorized to represent me in anything pertaining to the consolidation of the Silverton National and First National Banks, of Silverton, Colorado.

W. B. SLAUGHTER.

Witness:

D. L. WALKER.

Plaintiff's Exhibit 45.

January the Twenty Second, 1911.

Mr. W. B. Shaughnessy, Dallas, Texas.

Dear Sir: I am in receipt of your favor of the 20th and note what you say with reference to the Silveston Bank. However, I had hoped you would arrange to come up here and go over the matter. I took the matter up with Mr. Thatcher this A. M. and had a very pleasant visit and while we did not come to any terms for he had no substantial evidence as to the condition his bank was in, but assured me it was good and that he would have some evidence in the course of the next few days and would advise me.

213 In order I could take the matter up intelligently with Mr. Thatcher, I herewith enclose a letter which I showed him which is supposed to be from yourself. Of course, if you do not approve of this letter and the contents, you had better write me as I have already shown Mr. Thatcher the letter. In all probabilities we will be forced to pay \$100,000 for this stock but we did not go that far along with the exception he did agree we would pay one-half cash and the balance October 15th, he holding stock to the per cent.

Please put the carbon of this letter in your file in order you will know what I said to him if the occasion ever arises. Of course I have no idea of making a deal unless he absolutely agrees to only have one bank in Silveston. Of course, it is possible that another bank might start there, but I hardly believe so at this time.

I ordered a Federal Reserve Manual sent you at the cost of \$5.00 to ourselves, which I presume you have received one this and I am herewith enclosing check for \$5.00 to them, together with the bill and if you like the manual and think it will be of service to you you can send the check to them together with the bill, otherwise return the manual to them and the check to us.

Am also enclosing a letter which I received from Mr. Smith which after you have read and answered please return to me. This makes me hesitate about Smith and I believe if we do close the deal at Silveston, we will put someone up there to relieve him in a short time, as it seems all the men we have want to borrow some money from us, which I do not think looks good.

I wrote to Mr. Smith in all probabilities you could come 214 up as I thought you would and I wanted to have him prepared. Of course, he knows nothing of our fighting on buying the other bank and I do not want him to know until the deal is closed. Please return his letter to me as soon as it has served its purpose.

With love to all, I remain,

Your son,

Plaintiff's Exhibit 46.

February the Third, 1915.

Mr. W. B. Shugluey, Dallas, Texas.

DEAR SIR: I am in receipt in this morning's mail of the Prospectus of the Bankers Trust Company and believe it is a good advertisement and you are to be congratulated on getting out such an attractive folder, but I must confess I do not believe that the picture of yourself and others are as good as they might have been. I wish you would send me a half a dozen of these in order I can distribute them to some people that I think I can possibly sell some stock to a little later on.

I have not closed the deal with Mr. Thatcher up to this time as I am not thoroughly convinced the bonds are worth the value he is carrying them on his books. While I can appreciate that during the present money stringency these bonds are off a little to what they could be and of course a few points would not be any great difference at this writing, but he has some Great Northern Railway bonds at 5 which I do not believe are very good and I question very seriously if they could be sold at 50 cents. I am very much impressed with the method they keep the bank in.

I tried very hard to get in touch with Mr. Smith last Friday in order to come to Pueblo and go over the matter. I have given Mr. Thatcher my assurance I would not say anything to any of our employees about it, but I did have his permission to have one of them come to Pueblo if I would not disclose my mission. To my surprise I could not locate Mr. Smith at Silverton and nobody seemed to know where I could get him. Last night I got him at Durango. He stated he had been feeling badly and had been down to some wells taking the ladies and had been away from Silverton about a week, but he had got snow-bound or something like that and I asked him to come to Pueblo and he did not feel disposed to do so.

I am thoroughly disgusted with the manner in which he is doing business and you cannot depend on him for anything. You gave him positive instructions at Dallas that under no circumstances should he leave Silverton without first advising us, but it seems he does not do what he is asked to do and disregards instructions altogether. I would hardly want him to try to run this large bank with all its assets if this is the manner of doing business.

With reference to his \$10000.00 note I told him I would see you at the cattle convention and we would go over the matter and come to some understanding. I herewith enclose copy of letter I have written him today, as I think it is very essential we make this 30-cent assessment in order to get out about \$70000.00 bills receivable which I believe are bad. Among them is the Jackson paper. Mr. Smith furnished a list sometime ago which I misplaced and I am asking him in my letter to send me a list of the notes we should take out of the bank and presume he will do so.

I would state I have made arrangements with the Harriman National Bank for them to assist us in carrying this deal of the First National Bank through if we consummate it, or at least until I get opportunity to make the deal according to my own ideas. Believe I hold one of the notes signed by you to the Harriman National Bank, hence, I will not send it to you but send it direct to them. It will be for \$30,000.00 if they should ask you how much or anything about it.

I also have your favor of February 1st and note what the James-Mickle-Schow Company say and furthermore desire to state I sent you the note in accordance with your wishes and as I stated I do not believe you will find Mr. Oakes owns any stock in the Company in his name, but of course, if the suit will accomplish what your letter states, that is, it will give us jurisdiction on the stock up as collateral, I do not see any reason why we should not do as you suggest, but you sometimes sue people in order to get a judgment and then that is the end of it and we never get anything out of the suit. Believe I have about covered all the points necessary.

Your son,

235

Plaintiff's Exhibit 47.

February the Seventh, 1915.

Mr. W. B. Slaughter, Dallas, Texas.

My DEAR DAD: I presume it will be of interest to you to know we have closed the deal with Mr. M. D. Thatcher for the First National Bank of Silverton, paying \$70,000.00 for the same, along lines I have heretofore written you. I am today writing the Comptroller of the Currency, copy of letter enclosed herein, in order you will know what I have written and you had better keep all of this correspondence separate in order you can verify same if necessary.

Mr. Thatcher went to California Saturday night, hence it was imperative that we close or let the matter rest until he returns. Mr. Goodell was in the bank yesterday morning and we had quite a long talk. While he was hardly in favor of our buying for he felt possibly the town would remain about as it is and he finally agreed it was to our best interest to either sell or buy. I desire to state we have not been able to get into communication with Silverton since Thursday, as there was a very heavy snow storm and there has been snow slides and it is completely shut off. In fact, the railroad will not sell tickets any further than Durango.

Mr. Thatcher advised them yesterday we had bought their interest, etc. Of course, I have not told Smith or anyone up to this time, that we have made the purchase and will not do so until everything is arranged as I thought we would have someone go over and make the necessary arrangements after we received the necessary instructions from the Comptroller. I have agreed with Mr.

236 Thatcher we will keep all the present employees for 30 days, as it will require at least that time to get the consent of the Comp-

troller and get the two banks into consolidation. My idea is that we will liquidate the Silverton National for the purpose of going into consolidation with the First National.

I am also writing Mr. Werkheiser the Cashier of the First National Bank, as per the enclosed copy, as he will be the cashier for the next 30 days. Hence, if you care to write him, do so. I have had you elected President of the bank and myself Vice-President, as I find I do not have sufficient authority with these banks unless I have an official position. You will also be a director as well as myself and presume we will have to get some of the citizens for the directors. Think you had better write Mr. Cunningham at Silverton regarding the deal, asking for suggestions, etc.

I believe I told you I asked Mr. Smith to come to Pueblo, but for some reason he did not feel disposed to do so. I do not know whether he has returned to Silverton yet or not for the night I telephoned him was the night they had a very heavy snow slide on the railroad.

Will send you a complete statement of the loans, etc., on Monday.

Your son,

237

Plaintiff's Exhibit 48.

Oath of Director.

STATE OF TEXAS,

County of Dallas, ss:

I, the undersigned, Director of the First National Bank located at Silverton, Colorado, being a citizen of the United States, and resident of the State of Texas, do solemnly swear (affirm) that I will, so far as the duty devolves on me, diligently and honestly administer the affairs of said Association; that I will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which this Association has been organized; and that I am the owner, in good faith and in my own right, of the number of shares of stock required by said Statutes, subscribed by me or standing in my name on the books of the said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

W. B. SLAUGHTER.

Subscribed and sworn (affirmed) to before the undersigned this 22nd day of February, 1915.

[Official Seal of Officer.]

R. F. HENDERSON,
Notary Public.

My commission expires June 1st, 1915.

238

N. B.—If the officer administering the oath has no seal, a certificate of the proper State, county, or court official to the

effect that such officer is authorized to take acknowledgments must be attached.

Important.

Please state below whether elected by the shareholders at the annual meeting or a regularly called meeting, or appointed by the directors to fill a vacancy. Also give the name of the predecessor and if the vacancy was caused by death, resignation, disqualification, or expiration of term of office.

Appointed to fill the vacancy of — in place of J. A. Thatcher.

Signature of Cashier.

(Charter No. 2930 on back.)

Mercantile Nat. Bk. of Pueblo, Pueblo, Colorado, in Account with the Harriman National Bank of the City of New York.

HARRIMAN N. BK. OF. N. Y. VS. H. H. SELDOMRIDGE.

133

| Date. | Dr. | | Total. | Date. | Cr. | |
|-------|--|---|-------------------|--|--|--|
| | Debits. | Balance | | | Credits. | |
| 1. | 7830..... 7829..... 7834..... 7831..... 7832..... 7808..... 7833..... 7836..... | 134.12 48 1,200 1,019.59 50 .70 547.76 2,000 | | 1. C 2. " 4. " 5. Final paym't Gold fund Com. in 100,000 Foreign Exchange pool | 7,473.62 762.36 1,713.72 400.68 1,114.21 8,000 2,625 | |
| 3. | 7809..... 7811..... 7845..... 7839..... | 25 2.50 604.26 631.87 | 3,618.05 5,100 | 6. C " Coup 8. C " | 615.17 1,029.30 37.50 682.24 311.91 15,000 | |
| 4. | 7838..... 7843..... 7840..... 7849..... 7846..... | 2,028 200 25 150 200.13 | 115.88 2,228 | 9. C 11. Draft 13. C " " 15. C | 571.48 4.55 2,036.06 1,494.14 2,700 451.31 | |
| 5. | Telegram to Pueblo | .75 | 375.13 | | | |
| 6. | 7852..... | 238.50 | | | | |

Plaintiff's Exhibit 49.—*Continued.*

| Date. | Dr. | | Total. | Date. | Cr. | |
|-----------|----------|----------|----------|----------|-----|----------|
| | | Debits. | | | | Credits. |
| 7837..... | | 449.69 | | " | | 616.74 |
| 7854..... | | 1,057.08 | | 16. | | 1,126.68 |
| 7853..... | | 25 | 1,770.27 | Transfer | | 30,000 |
| 240 | | | | | | |
| 8. | | | | 18. | C | 933.19 |
| 7857..... | 2 | | | | | |
| 7855..... | 100 | | | | | |
| 7847..... | 4.55 | | | | | |
| 7861..... | 900 | | | | | |
| 7860..... | 2,003 | | | | | |
| 7850..... | 400 | | 3,409.55 | | | |
| 7865..... | 16.20 | | | | | |
| 7862..... | 791.75 | | | | | |
| 7864..... | 2,376.18 | | | | | |
| 7851..... | 150.40 | | | | | |
| 7863..... | 5,000 | | | | | |
| 7844..... | 31.45 | | | | | |
| 7869..... | 2.16 | | 8,365.98 | | | |
| 7867..... | 1,943.66 | | | | | |
| 7866..... | 26.25 | | 1,972.07 | | | |
| 7859..... | 1,500 | | | | | |
| 7856..... | 177.45 | | | | | |
| 7868..... | 150 | | | | | |
| 7870..... | 51.15 | | | | | |
| 7810..... | 50 | | 1,928.60 | | | |

| | | | | | | |
|-----|---------------------|----------|--|----------|---------------------|-----------|
| 13. | 7746..... | 4.39 | | 4.39 | Total Credits | 79,699.86 |
| | | | | | " Debits | 56,569.55 |
| | | | | | Balance | 23,130.31 |
| 15. | Br't For'd | | | | | |
| | 7874..... | 436.85 | | | | |
| | 7878..... | 10 | | | | |
| | 7879..... | 426.22 | | | | |
| | 7871..... | 3,451.07 | | | | |
| | 7886..... | 3,000 | | 7,324.14 | | |
| | Cr. Bills Dis. | | | 6,120 | | |
| 16. | 7895..... | 1,121.99 | | | | |
| | 7897..... | 85.75 | | | | |
| | 7889..... | 45 | | 1,252.74 | | |
| | OC | | | 250 | | |
| 241 | | | | | | |
| 17. | 7894..... | 1,221.95 | | | | |
| | 7904..... | 57.40 | | | | |
| | 7888..... | 10 | | | | |
| | 7900..... | 1,621.18 | | | | |
| | 7898..... | 3 | | | | |
| | 7842..... | 50 | | | | |
| | 7885..... | 12.60 | | | | |
| | 7902..... | 5,000 | | | | |
| | 7873..... | 5 | | | | |
| | 7911..... | 8.75 | | | | |
| | 7908..... | 2.42 | | | | |
| | 7909..... | 1.78 | | | | |
| | 7745..... | 30 | | | | |
| 18. | | | | 7,976.13 | | |

Plaintiff's Exhibit 49.—*Continued.*

| Date. | Dr. | | Total. | Date. | Cr. | |
|---------------|---------|-------|--------|-------|----------|--|
| | Debits. | | | | Credits. | |
| 7835..... | 22 | | | | | |
| 7910..... | 3.92 | | | | | |
| 7899..... | 3.25 | | | | | |
| 17. 7901..... | | 77.12 | | | | |
| 18. 7876..... | | 2,010 | | | | |
| | | 25 | | | | |

Plaintiff's Exhibit 50.

Mercantile National Bank of Pueblo, Pueblo, Colorado, in Account with the Harriman National Bank of the City of New York.

| Date. | Dr. | | Total. | Date. | Cr. | |
|--------------|-------------|--|----------|-------|----------|-----------|
| | Debits. | | | | Credits. | |
| | Brot. Ford. | | | | Balance | |
| 1. 7953..... | 2,984.25 | | | 1. C | ..... | 67,782.50 |
| 7890..... | 42.85 |  |  | " | ..... | 293.84 |
| 2. 7958..... | 1,570.78 | | 3,027.10 | " | ..... | 1,671.19 |
| 7938..... | 25.00 | | | C | ..... | ..... |
| Ret. .... | ..... |  | 1,595.78 | " | ..... | 6,459.12 |
| | | | 3.87 | 4. " | ..... | 3,393.09 |
| | | | | 5. " | ..... | 7,420.38 |
| 242 | | | | | | |
| | | | | 8. | ..... | 1,688.71 |
|  |  |  |  |  | ..... | 2,511.03 |

Amt. transferred to Nat.
Bank Commerce for Cr.

Plaintiff's Exhibit 50.—*Continued.*

| Date. | Ret. | Dr. | | Total. | Date. | Cr. | |
|-------|-------------|-----------|--|----------|-------|----------------------------|------------|
| | | Debits. | | | | Credits. | |
| 243 | | | | 8.52 | | | |
| 11. | 7977..... | | | 15.00 | | | |
| | 7982..... | | | 10.00 | | | |
| | 7984..... | | | 2.25 | | | |
| 12. | 7992..... | 1,000.00 | | | | | |
| | 7969..... | 100.00 | | | | | |
| | 7986..... | 31.20 | | | | | |
| | 7993..... | 1,399.45 | | | | | |
| | 7987..... | 7.00 | | | | | |
| | 7996..... | 1.36 | | | | | |
| 13. | 7997..... | 13.47 | | 2,537.65 | | Total Credits | 294,497.94 |
| | 7978..... | 3.00 | | | | " Debits | 271,536.57 |
| | 8000..... | 5.00 | | | | Balance Mch. 27, 1915..... | 22,961.37 |
| | 8002..... | 49.63 | | 72.46 | | Balance | |
| | Brot. Ford. | | | | | | |
| 15. | 8014..... | 5,000.00 | | | | | |
| | 8004..... | 2,009.00 | | | | | |
| | 8001..... | 13.41 | | | | | |
| | 7960..... | 100.00 | | | | | |
| | 7994..... | 16.50 | | | | | |
| | 7959..... | 100.00 | | | | | |
| | 8008..... | 7,500.00 | | | | | |
| | 8003..... | 10,000.00 | | | | | |

| | | | |
|-----|--------------|----------|-----------|
| 16. | 7998..... | 7.60 | |
| | 7999..... | 120.22 | |
| | 7995..... | 5.33 | 24,872.06 |
| | 8011..... | 525.00 | |
| | 8009..... | 789.14 | |
| | 8016..... | 29.10 | |
| | 8017..... | 242.58 | |
| | 8015..... | 1,513.19 | |
| | 8006..... | 1,000.00 | |
| | 8018..... | 5,000.00 | 9,099.01 |
| 17. | 8010..... | 49.00 | |
| | 8007..... | 13.40 | |
| | 8005..... | 263.95 | |
| | 8019..... | 2,130.86 | |
| | 8012..... | 300.00 | 2,757.21 |
| 244 | | | |
| 18. | 8025..... | 5,000.00 | |
| | 8013..... | 2.00 | 5,002.00 |
| | 8023..... | 750.00 | |
| 19. | 8020..... | 30.00 | |
| | 8026..... | 2,584.46 | |
| | 8022..... | 5.45 | |
| | 8024..... | 3,000.00 | 6,369.91 |
| | CC 8030..... | | 10,000.00 |
| 20. | 7957..... | 3.00 | |
| | 8035..... | 2.00 | |
| | 8033..... | 56.80 | |
| | 8028..... | 1.64 | |
| | 8031..... | 701.83 | 765.27 |

Plaintiff's Exhibit 50.—*Continued.*

| Date. | Dr. | | Total. | Date. | Cr. |
|-------|-------------------|------------|------------|-------|-----|
| | Pro. fees | Debits. | | | |
| 22. | 8041..... | 97.05 | 1.56 | | |
| | 8027..... | 11.85 | | | |
| | 8034..... | 75.00 | 183.90 | | |
| | 8038..... | | 2,017.00 | | |
| | Ret. | | 1.52 | | |
| 23. | 8040..... | 52.83 | 52.83 | | |
| | 8044..... | 5,000.00 | | | |
| | 8039..... | 7.35 | | | |
| | 8037..... | 881.04 | 5,888.39 | | |
| | 8032..... | | 177.55 | | |
| 24. | 8042..... | 1,714.57 | | | |
| | 8045..... | 2,522.42 | 4,236.99 | | |
| 25. | 7912..... | 20.43 | | | |
| | 8047..... | 100,000.00 | 100,020.43 | | |
| | 8048..... | | 3,000.00 | | |
| 26. | Telegram in re | | | | |
| | C. C. Slaughter | | 4.61 | | |
| | 8049..... | 2,118.04 | | | |
| | 8036..... | 7.35 | 2,125.39 | | |
| | Am't. of Loan of | | | | |
| | W. R. Slaughter & | | | | |
| | C. C. | | 20,000.00 | | |

245

Defendant's Exhibit A.

Pueblo, Colo., Feb. 17, 1915.

Harriman National Bank.

Place thirty thousand personal account W. B. Slaughter our credit.

MERCANTILE NATIONAL BANK.

Paid.

Defendant's Exhibit B.

Harriman National Bank,

Fifth Avenue and Forty-Fourth Street,

New York, Feb. 18, 1915.

Personal.

Mr. W. B. Slaughter, Mercantile National Bank, Pueblo, Colo.

DEAR SIR: We have this day received a telegram as follows:

"Place thirty thousand personal account W. B. Slaughter our credit."

In accordance with instructions therewith, we have charged your account \$30,000 and placed this amount to the credit of the Mercantile National Bank of Pueblo, Colo. Kindly confirm our action in this matter.

216 On February 16th, we advised you that there was a Revenue Tax of \$6.00 on the loan made that day. Will you kindly send us your check in payment, and oblige,

Very truly yours,

THOMAS B. CLARKE, Jr.,
Vice-President.

Defendant's Exhibit C.

Dallas, Texas, June 25th, 1915.

Mr. Thom. B. Clark, Jr., Vice-Pres., Harriman National Bank, New York, N. Y.

DEAR SIR: Your letter of June 15th, which was mailed to me at Pueblo and forwarded to Dallas, has been received, and contents noted.

I received notice of this note in April at Pueblo, and advised you at that time that I never signed a note of \$20,000.00 to you, and if you have my name to a \$20,000.00 note it's forgery, and I never authorized anyone else to this effect.

This is the second notice I have sent you in regard to the matter. I know nothing about the note in question.

Yours very truly,

W. B. SLAUGHTER.

W. B. S.-W.

Defendant's Exhibit D.

Western Union Telegram.

New York, N. Y., 1142A, Mar. 26, 1915.

W. B. Shaghton, Pres. New Nat. Bank, Pueblo, Colo.

We credited your personal account \$30,000 February 26th pro-
ceeds of loan. Under instructions from C. C. Shaghton February
26th, we changed your personal account and credited account Mer-
centile National Bank with the \$30,000. Inasmuch as we have
not received confirmation and instructions from you personally as
requested we have this day changed Mercantile National Bank
\$30,000 and hold the amount out of their account and in our Funds
Account subject to adjustment of which please take note. Balance
Mercantile National Bank after this deduction is \$25,000 still.

MERCANTILE NATIONAL BANK.

JOHN A. NOBLE, *Cashier*.

Defendant's Exhibit E.

Mercantile National Bank.

2111 Avenue and Forty Fourth Street.

New York, March 26th, 1915.

Mr. W. B. Shaghton, President, Mercantile National Bank, Pueblo,
Colo.

Dear Sir: We telegraphed you today in cipher as follows:

"We credited your personal account \$30,000 February 26th pro-
ceeds of loan. Under instructions from C. C. Shaghton
26th February 26th, we changed your personal account and
credited account Mercantile National Bank with the \$30,
000. Inasmuch as we have not received confirmation and instruc-
tions from you personally as requested we have this day changed
Mercantile National Bank \$30,000 and hold the amount out of
their account and in our Funds Account subject to adjustment
of which please take note. Balance Mercantile National Bank
after this deduction is \$25,000 still."

MERCANTILE NATIONAL BANK.

(Signed)

JOHN A. NOBLE, *Cashier*.

Inasmuch as there is some misunderstanding with regard to this
loan, we have taken the above said action. We should like very
much to hear from you as to your telegram of the 26th, cancelling
authority of Mr. C. C. Shaghton, and also as to your telegram of
the 26th, advising that all guarantee of your bank, its officers or
directors covering transactions subsequent to that date are cancelled
and revoked. Your telegram is signed by W. B. Shaghton, Pres.

Cashier, and also by Robert Grant. We are certainly at a loss to understand these telegrams and should like a full explanation from you in writing.

Awaiting your adjustment of these matters, I am, with kind regards,

Yours very truly,

JOHN A. NOBLE, Cashier.

259

Defendant's Exhibit F.

Monmouth National Bank.

January the Twenty Eighth, 1915.

Mr. J. W. Harrison, President, Harrison National Bank, New York City.

DEAR MR. HARRISON: I believe you are aware that I am President of the Silverton National Bank at Silverton, Colorado. Unfortunately, business has been very dull in that section for the past two years with the result that the Silverton National Bank, of which I am the principal stockholder, owning practically all the stock has not proved very *convenient*.

There are only two banks there, the First National which is owned and controlled by Mr. M. D. Thatcher, and the Silverton National, and I believe it is to our mutual advantage to either buy or sell and consolidate the two, thereby making a very satisfactory bank. I believe with a \$50,000.00 capital and surplus of \$15,000.00, would be sufficient to do business on. Hence, I either expect to buy the First National Bank or sell my interests to Mr. Thatcher and in order to buy I would require for about 60 days, \$25,000.00 or \$30,000.00. In other words, I would need this until I could get my money on the consolidation out of the First National Bank, but under no circumstances would I need the loan for over sixty days, that is, to April 1st.

If I do not have the money at that time, I will contact my *clients* and they will pay my indebtedness. Believe you will remember sometime ago you accommodated me with a loan and it was paid at maturity. Of course, you will not discontinue me in the least if it is not agreeable for you to make this loan at this time.

As security, I would offer 500 shares of the Monmouth National Bank which is worth at book value \$1.35 and 400 shares of the First National Bank, for if I purchase I will purchase the entire holdings and the bank will be known as the First National. I believe this will be ample security.

I will be very glad if you will telegraph me your decision as it will reach me by Monday. As stated, I will execute a note payable 60 days after date and will have my son C. C. Shaghter sign with me, if you deem necessary. All I can offer in the way of my appreciation of the loan would be to give you the New York account of the First National Bank.

I have been intending to get up to New York for sometime and make arrangements for my Trust Company's account in Dallas. We now have over a million dollars subscribed but conditions have been so very bad on account of the cotton crop, I have not deemed it wise to spread out my correspondents. However, I will be up there between now and May and trust I can make satisfactory arrangements for my Trust Company.

Yours very truly,

W. B. SLAUGHTER.

251

Defendant's Exhibit G.

Via Western Union Telegraph Co.

Feb. 1, 1915.

Mr. W. B. Slaughter, President, Mercantile National Bank, Pueblo, Colo.:

Letter received. Will accommodate you to extent thirty thousand dollars for sixty days upon security and joint note yourself and C. C. Slaughter when you need it. Letter follows.

HARRIMAN NATIONAL BANK.

Collect.

Defendant's Exhibit H.

Harriman National Bank,

Fifth Avenue and Forty-Fourth Street.

New York, Feb. 1, 1915.

Personal.

Mr. W. B. Slaughter, President, Mercantile National Bank, Pueblo, Colo.

DEAR MR. SLAUGHTER: Your letter of the 28th ultimo received and contents carefully noted. I have wired you today, confirmation of which is herewith enclosed.

252 I hope that your consolidation will result in profitable advantage to you, and if we can be of any assistance to you along the lines indicated in the telegram sent you today, which is to the effect that we will lend you \$30,000 for sixty days on 500 shares of the Mercantile National Bank stock and 400 shares of the First National Bank of Silverton, upon the joint note of yourself and Mr. C. C. Slaughter, please advise us.

I enclose note duly filled in, for the required signatures and date, which you can forward to us, with the security, whenever you require the money.

We are pleased to be of service to you, and will be very glad to have any accounts that go with this consolidation.

Very truly yours,

J. W. HARRIMAN, *President.*

Encl.

Defendant's Exhibit I.

Mercantile National Bank.

February the Seventh, 1915.

Mr. Jos. W. Harriman, President, Harriman National Bank, New York City.

DEAR MR. HARRIMAN: I received your wire on last Monday stating you would be glad to accommodate me along lines suggested in your letter in order to assist me in consummating a deal with the First National Bank of Silverton, thereby enabling us to consolidate the two banks and we should have a very fair deposit, and in accordance with your telegram and also letter of late date, I am herewith handing you the note, dated February 10th, properly signed by myself and C. C. Slaughter and also enclose five hundred shares of the capital stock of the Mercantile National Bank and also four hundred shares of the First National Bank of Silverton, Colorado.

Will ask you to kindly place the proceeds of this note to my credit. If for any reason this note is not satisfactory, kindly wire as I am drawing on the funds on Monday. It will possibly be twenty or thirty days before I will be able to give you the First National Bank's account for the reason I will not get up there to make the necessary arrangements. In fact, it will take us in all probability at least thirty days before we can consolidate the two banks. It is our intention to consolidate the two banks, that is the Silverton National with the First National, and let them remain under the name of the First National Bank. Any suggestions you have to offer along this line that you think would be helpful to us, will be appreciated.

We expect to have a combined capital of something like \$90,000.00. Again thanking you for the many favors extended in the past and assuring you of my appreciation and furthermore, I hope I will soon be able to give you my Trust Company's account.

Will write you fully along this line in a few days.

Yours very truly,

W. B. SLAUGHTER.

254 Defendant's Exhibit J.

Authorized Signatures of Pueblo, Colo., Mercantile National Bank.

W. B. Slaughter, President.

Mar. 23/15 resigned C. C. Slaughter, Cashier.

W. D. Grisard, Asst. Cashier.

W. E. Grant, for the Cashier.

For the Harriman National Bank of the City of N. Y.
Apr. 25, 1914.

Defendant's Exhibit K.

\$30,000.00

305.00

\$30,305.00

New —, February 10, 1915.

Sixty days after date for value received, the undersigned promises to pay to The Harriman National Bank, of the City of New York, or order, at said Bank, Thirty thousand 00/100 dollars, with interest at the rate of 6 per cent. per annum, having deposited with said Bank as collateral security the following property, viz:

500 shares Mercantile Nat. Bank Pueblo, Colo. stock.

400 shares 1st Nat. Bank Silverton Colo. stock.

- 255 The undersigned agrees without demand or notice from the Bank to keep a margin of collateral on this note of not less than 25 per cent., or in default thereof this note shall, at the option of the Bank, or of its President or Cashier, become due and payable forthwith without notice. The undersigned hereby authorize the Bank or its President or Cashier to sell all or any part of the collateral to this note without notice, at the New York Stock Exchange, or at public or private sale, at the option of the Bank or of its President or Cashier, in case of non-payment of this note or of the non-performance of any of the stipulations herein contained, applying the net proceeds to the payment of this note, including interest, and accounting to the undersigned for the surplus if any; and the Bank may purchase the whole or any part of the collateral for its own account at any public sale or sale at the Exchange. In case of deficiency the undersigned promise to pay to the Bank forthwith after such sale the amount thereof with legal interest. It is agreed that if recourse be had to the collateral, any excess of collateral, or of the proceeds of sale of collateral, shall be applicable to any other note or claim held by the Bank against the undersigned whether such note or claim now exist or be hereafter made or incurred, and whether at the time of such application the note or claim shall be due or not, and whether the liability of the undersigned in respect to such note or claim be absolute or dependent upon any contingency, and even though such contingency may not at that time have happened. The Bank is hereby given a lien for the payment of this note and of all other claims against the undersigned which now exist or which may hereafter arise in favor of the Bank upon all
- 256 property or securities which have been or which shall hereafter be given to or left in the possession or custody of the Bank by or for the undersigned for safe keeping or for any other purpose, and also upon the balance of any account of the undersigned with said Bank, and this notwithstanding such property or securities may have been or shall be deposited as security for some special purpose. The Bank or its President or Cashier is hereby

authorized at its or his option, at any time, to appropriate and apply to the payment and extinguishment of this note and of any or all of the notes, claims or liabilities herein referred to, all moneys, securities and credits now or hereafter in the hands of the Bank, on deposit or otherwise, to the credit of or belonging to the undersigned. In case of any exchange of, or addition to the collateral named in this note, the provisions of this note shall extend to such new or additional collateral. Upon any transfer of this note the Bank may deliver the collateral or any part thereof to the transferee, who shall thereupon become vested with all power and rights above given to the Bank in respect thereto, and the Bank shall thereafter be fully discharged from any responsibility concerning them. It is further agreed that in the event of insolvency of the undersigned, or on the occurrence of anything evidencing insolvency, this note and all of the said notes, claims and liabilities shall become and be immediately due and payable without notice or demand of payment.

W. B. SLAUGHTER.

C. C. SLAUGHTER.

Six Dollars in revenue stamps attached and cancelled.

257

(Endorsement.)

In consideration of the making, at the request of the undersigned of the loan evidenced by the within note upon the terms thereof, and of the sum of one dollar, the undersigned hereby guarantee to The Harriman National Bank, of the City of New York, its successors, endorsees, or assigns, the payment of the said loan when due; and hereby consent that the securities for the said loan may be exchanged or surrendered from time to time, or the time of payment of the said loan extended, without notice to or further assent from the undersigned, and that the undersigned will remain bound upon this guarantee notwithstanding such changes, surrender or extension. The undersigned waive demand of payment from the maker of said note, and also waive notice of non-payment of the said loan or note, and also waive notice of any sale of the collateral securities held for the said note.

Defendant's Exhibit L.

No. 3.

250 shares.

The Mercantile National Bank of Pueblo, Colo.

Shares \$100.00 Each.

Capital Stock \$200,000.

This is to certify that W. B. Slaughter is the owner of Two Hundred and Fifty Shares of the Capital Stock of The Mercantile

258 National Bank of Pueblo, Colo. transferable only on the books of the corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In witness whereof the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this thirteenth day of February 1912.

[SEAL.]

W. B. SLAUGHTER, *President*.

C. C. SLAUGHTER, *Cashier*.

For value Received — hereby sell, assign and transfer unto — — shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint — — Attorney to transfer the said stock on the Books of the within named Corporation with full power of substitution in the premises.

Dated — —, 19—.

W. B. SLAUGHTER.

In Presence of

C. C. SLAUGHTER.

NOTICE.—The signature to this assignment must correspond with the name as written upon the face of this certificate in every particular without alteration or enlargement or any change whatever.

259

Defendant's Exhibit M.

No. 4

250 Shares.

The Mercantile National Bank of Pueblo, Colo.

Shares \$100.00 Each.

Capital Stock \$200,000.

This is to certify that W. B. Slaughter is the owner of Two Hundred and Fifty Shares of the capital stock of The Mercantile National Bank of Pueblo, Colo. transferable only on the books of the corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In witness whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation this thirteenth day of February 1912.

[SEAL.]

W. B. SLAUGHTER, *President*.

C. C. SLAUGHTER, *Cashier*.

For value Received — hereby sell, assign and transfer unto — — — shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint — — —, Attorney to transfer the said stock on

260

the Books of the within named Corporation with full power of substitution in the premises.

Dated — —, 19—.

W. B. SLAUGHTER.

In Presence of

C. C. SLAUGHTER.

NOTICE.—The signature to this assignment must correspond with the name as written upon the face of this certificate in every particular without alteration or enlargement or any change whatever.

Defendant's Exhibit N.

Number 109.

Shares 400.

The First National Bank of Silverton, Colorado.

Capital Stock, \$50,000.

This certifies that W. B. Slaughter is the owner of Four Hundred Shares of the Capital Stock of The First National Bank of Silverton, Colo. transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

In witness whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and be sealed with the Seal of the Corporation this Fourth day of February A. D. 1915.

[SEAL.]

W. S. SLAUGHTER, *President*.

JNO. H. WERKHEISER, *Cashier*.

Shares \$100 Each.

For Value Received — hereby sell assign and transfer unto — — — Shares of the Capital Stock represented by the within Certificate and do hereby irrevocably constitute and appoint — — — to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated — —, 19—.

W. B. SLAUGHTER.

In presence of

C. C. SLAUGHTER.

NOTICE.—The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

262

Defendant's Exhibit O.

Via Western Union Telegraph Company.

New York, N. Y.,
March 29, 1915.George W. Goodell, Examiner Mercantile National Bank Pueblo,
Colo.Telegram advising suspension received. Balance opening of business forty two thousand odd twenty thousand of which is uncollected.
HARRIMAN NATIONAL BANK.

Collect.

Defendant's Exhibit P.

Deposited with Mercantile National Bank, of Pueblo, by W. B. Slaughter.

2-8-1915.

Enter all checks separately with name of bank drawn on.

| | Dollars. | Cents. |
|----------------|----------|--------|
| Currency | | |
| Gold | | |
| Silver | | |
| Checks | | |
| Harriman | 30,000 | |
| Total | \$30,000 | |

See that all checks and drafts are endorsed.

263

Defendant's Exhibit Q.

Number 29.

Shares 450.

The First National Bank of Silverton, Colorado.

This Certifies that W. B. Slaughter of Pueblo, Colorado is the owner of Four hundred fifty Shares of One Hundred Dollars each of the Capital Stock of The First National Bank of Silverton transferable only in person or by attorney on the books of the Company upon surrender of this certificate.

In Witness Whereof the President and Cashier of said Association have hereunto subscribed their names and caused their corporate seal to be affixed at Silverton, Colo., this 10th day of February 1915.

[SEAL.]

JOHN H. THATCHER, V-P.
— — —, President.

JNO. H. WERKHEISER, Cashier.

Cancelled April 9, 1915.

For value received, the undersigned, hereby assign and transfer unto ——— Shares of the Capital Stock of The First National Bank of Silverton and do hereby constitute and appoint ——— true and lawful Attorney, irrevocable, for and in — name
 264 and behalf, to make and execute all necessary acts of assignments and transfer required by the regulations and by-laws of said Bank.

In witness whereof, — have hereunto set — hand and seal this — day of — 18—.

W. B. SLAUGHTER.

Sealed and delivered in presence of

W. D. GRISARD,

Witness to Ink Signature of W. B. Slaughter.

Stamps affixed.

Defendant's Exhibit R.

Pueblo, Colo.,

April 14, 1913.

No. 366.

Mercantile National Bank of Pueblo.

United States Depositary.

Pay to the order of Mts. States Telephone & Tel. Co. \$500 Five Hundred No/100 Dollars.

W. B. SLAUGHTER.

5 shares stock.

265 (Endorsed as follows:)

Pay to the order of The First National Bank, Denver, Colorado, Apr. 15, 1913. The Mountain States Telephone and Telegraph Co. Edw. B. Field, Jr., Treasurer, Successor to The Colorado Telephone Co.

Pay any bank or banker prior endorsements guaranteed April 15, 1913. W. 1 The First National Bank, Denver, Colorado.

Paid April 16, 1913. Clearings First National Bank, Pueblo, Colorado.

(Perforated Paid 4/16/13.)

Defendant's Exhibit S.

Directors' Meeting.

At a meeting of the Board of Directors of the Mercantile National Bank, Pueblo, Colorado, at its banking room at Second and Main Streets, this, the Twenty-sixth day of July, 1913, the following di-

rectors were present: W. B. Slaughter, Will E. Grant, W. D. Grisard and C. C. Slaughter.

The discount committee of the bank reported that they had examined loans #5688 to #5861 *inclusively* and same had been duly approved.

266 It was move- and seconded that the report of the discount committee be received and the same has been ratified and approved, moved and carried.

The cashier reported that the Stines had disposed of their business and had paid \$2100.00 on the indebtedness leaving a balance still due and that would be liquidated as soon as the party whom they sold paid them the balance which would be about October first, and the action of the cashier was approved.

No further business coming before the board, the same adjourned.

W. B. SLAUGHTER.

C. C. SLAUGHTER.

Defendant's Exhibit T.

December the Twelfth, 1913.

Mr. W. B. Slaughter, Dallas, Texas.

DEAR JUDGE: Enclosed please find our statement at the opening of business December 12th, also a letter addressed to you from El Paso and statements from Silverton and Texline.

There is no news with us here. The weather is gradually moderating and things are assuming their normal condition after the heavy snow.

Buford Ross was in yesterday and renewed his note, which we today send on to the Live Stock Exchange Bank in Chicago, in lieu of one for like amount due on the 16th. This note was payable to W. B. Slaughter and Son and as Bill Wheatley was in today I had him endorse the same as he writes somewhat like yourself. Kindly endorsed my action for having him do this as I thought from Coney's letter to the Live Stock he wished the note renewed.

We got the Table Queen Baking Company to renew their note for \$4,100.00 and took a new mortgage on everything, having the same recorded immediately. We received two notes from Tobe Pitts with chattel mortgage attached, one for \$12,000.00 due June 1st, 1914, and one for \$14,482.50 due June 1st, 1914, this latter payable to W. B. Slaughter and son which I will have Bill Wheatley endorse and will take care of same. There is nothing else of interest.

With kindest of personal regards and best wishes, I am,
Yours truly,

W. D. GRISARD.

Defendant's Exhibit U.

Authorized Signatures of Mercantile National Bank of Pueblo, Colo.

W. B. Slaughter, President.

— — —, Vice-President.

— — —, Vice-President.

C. C. Slaughter, Cashier.

W. D. Grisard, a/ Asst. Cashier.

W. W. Wheatley, a/c Asst. Cashier.

For The Harriman Natl. Bank of the City of N. Y.

Jan. 8 1912. 191.

268

Stipulation.

United States District Court, Southern District of New York.

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National
Bank of Pueblo, Colorado, Plaintiff,

against

HARRIMAN NATIONAL BANK OF NEW YORK, Defendant.

It is hereby stipulated that the foregoing printed copy is a true transcript of the record of said District Court in the above-entitled action as agreed upon by the parties.

Dated, New York, Nov. 1, 1916.

BARBER, WATSON & GIBBONEY,

Attorneys for Plaintiff.

WESSELMAN & KRAUS,

Attorneys for Defendant.

269 United States District Court, Southern District of New York.

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National
Bank of Pueblo, Colorado, Plaintiff,

against

HARRIMAN NATIONAL BANK OF NEW YORK, Defendant.

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the Bill of Exceptions as printed in the Transcript of Record hereto annexed be settled and allowed, and filed as the original Bill of Exceptions herein, and that an order to that effect may be entered without further notice.

Dated, New York, November 2nd, 1916.

BARBER, WATSON & GIBBONEY,

Attorneys for Plaintiff.

WESSELMAN & KRAUS,

Attorney- for Defendant.

Upon the above stipulation of the parties hereto it is hereby ordered that the Bill of Exceptions as printed in the Transcript of Record hereto annexed be settled and allowed and filed as the original Bill of Exceptions herein.

Dated, New York, November 2nd, 1916.

AUGUSTUS S. HAND, U. S. D. J.

270

Clerk's Certificate.

United States District Court, Southern District of New York.

HARRY H. SELLSMIDGE, as Receiver of the Mercantile National Bank of Pueblo, Colorado, Plaintiff,

against

HARRIMAN NATIONAL BANK OF NEW YORK, Defendant.

UNITED STATES OF AMERICA,

Southern District of New York, vs:

I, Alex. Gilchrist, Jr., Clerk of the District Court of the United States of America, do hereby certify that the foregoing is a correct transcript of the record of said District Court in the above-entitled action, as agreed upon by the parties.

In testimony whereof, I have caused the seal of said Court to be hereunto affixed at the City of New York in the Southern District of New York this 2nd day of November in the year of our Lord One Thousand Nine hundred and Sixteen, and of the Independence of the United States the One hundred and forty-first.

[SEAL.]

ALEX. GILCHRIST, *Clerk*

21764.

271 United States Circuit Court of Appeals for the Second Circuit,
October Term, 1916.

No. 159.

Argued January 12, 1917; Decided February 8, 1917.

HARRIMAN NATIONAL BANK, Plaintiff-in-Errow (Defendant Below),
against

HARRY H. SELLSMIDGE, as Receiver of the Mercantile Bank of Pueblo, Colorado, Defendant-in-Errow (Plaintiff Below).

In Errow to the District Court of the United States for the Southern District of New York.

Before Cox, Rogers and Hough, Circuit Judges.

On writ of errow to review a judgment for \$32,100 damages entered by direction of the court in favor of the defendant-in-errow who was

the plaintiff below. The parties will be referred to hereafter as they appeared in the District Court, viz., as Plaintiff and Defendant.

Washburn & Keim, for Plaintiff in Error (Defendant below).
 Stuart G. Gibboney and George W. Burstin, for Defendant in Error (Plaintiff below).

Coxe, J.:

On January 28th, 1915, a letter purporting to be signed by W. B. Slaughter stating that he was the President of the Silverton 272 National Bank, at Silverton, Colorado, was sent to J. W. Harrison, President of the Massman National Bank of New York stating that he (Slaughter) wished to buy the control of the only other bank at Silverton, viz., the First National. In order to make this purchase he stated that he "would require for about 60 days \$25,000 or \$30,000." This letter was signed W. B. Slaughter, with a rubber stamp.

On February 1, 1915, the Massman National Bank telegraphed Slaughter:

"Letter received. Will accommodate you to extent thirty thousand dollars for sixty days, upon security and joint note yourself and C. C. Slaughter when you send it. Letter follows."

On February 6, 1915, all the stock of the First National Bank of Silverton was purchased from M. B. Thatcher and a check for \$25,000 on the Massman National was given in part payment thereof. This check was signed "W. B. Slaughter by C. C. Slaughter." In order to meet this cheque, C. C. Slaughter handed in a deposit slip of which the following is a copy:

"Deposited with Massman National Bank of Pacific by W. B. Slaughter, 2-6-15.

Enter all checks separately with name of bank drawn on.

Balance, Forward

| | |
|----------|----------|
| Currency | |
| Gold | |
| Silver | |
| Checks | |
| Massman | 30,000 |
| Total | \$30,000 |

273 C. C. Slaughter is the son of W. B. Slaughter and was cashier of the bank. W. B. Slaughter was engaged in the cattle business.

On February 7, C. C. Slaughter wrote to Joseph W. Harrison, President of the Massman National Bank, a letter signed W. B. Slaughter, in which he says:

"I am herewith handing you the note, dated February 10, properly signed by yourself and C. C. Shaughter and also inclose five hundred shares of the capital stock of the Mercantile National Bank and also five hundred shares of the First National Bank of Silverton, Colorado. Will you be kindly please the proceeds of this note to my credit. If for any reason this note is not satisfactory, kindly note as I am banking on the bank on Monday * * * In fact, I will take up to all probabilities at least thirty days before we can cashmate the two banks."

The note was presented to the Harrison National Bank and the proceeds placed to the credit of W. E. Shaughter on February 10, 1917. On February 17, the Harrison Bank telegraphed to the Mercantile Bank at Pueblo, Colorado, as follows:

"Checks presented your account appear to be sufficient \$2,000. Have you sufficient to cover cashed? Shaughter's personal balance is \$20,000. Will you please to loan proceeds for credit bank, etc."

In reply a telegram was sent directed by C. C. Shaughter as follows:

"Have thirty thousand personal account W. E. Shaughter on credit."

RECEIVED FEBRUARY 22 1917

On receipt of this telegram the Harrison Bank transferred \$20,000 from the account of W. E. Shaughter to the account of the Mercantile Bank and asked for confirmation of authority to do so. This was answered by a letter dated February 22 and was signed C. C. Shaughter "Pueblo." On March 26, 1917, a telegram was received by the Harrison Bank signed W. E. Shaughter as follows:

"Grant authority C. C. Shaughter as an officer this bank as of this today request."

On March 27 the general officer of the Mercantile Bank telegraphed to the Harrison Bank asking for a statement of account.

On March 30, the Harrison Bank telegraphed to W. E. Shaughter as follows:

"W. E. Shaughter, President Mercantile National Bank, Pueblo, Colorado."

We audited your personal account Harry Desmond Holman February last, proceeds of loan. I will instruct you C. C. Shaughter as President mercantile as changed your personal account and cashed account Mercantile National Bank with the thirty thousand shares. Inasmuch as we have not received confirmation and instruction from you personally as requested we have this day changed Mercantile National Bank Harry Desmond Holman and have the account set at that account and to our credit account subject to

adjustment of which please take note. Balance of Mercantile National Bank after this deduction is twenty three thousand dollars off.

MERCANTILE NATIONAL BANK,
ROBERT A. NOBLE, Cashier.

On March 20, the note of W. B. Slaughter and C. C. Slaughter was charged against the credit of \$30,000 held in the sundry account by the Mercantile Bank. It appears from the Mercantile

Bank statement that the transfer of \$30,000 to the credit of the Mercantile Bank was in part withdrawn. It also appears that the Mercantile Bank had been doing business with the Mercantile Bank for at least three years and that at the close of business on March 20, 1915, there was a balance to the credit of the Mercantile Bank on the books of the Mercantile Bank of over \$25,000. If that sum, or any part thereof, was removed or misapplied, without authority from the Mercantile Bank, the Treasurer of that bank is entitled to recover. The Mercantile Bank never gave any orders, oral or written, which authorized the withdrawal of this fund.

On March 20, the bank examines its change of the Mercantile Bank telegraphed to the Mercantile Bank announcing the suspension of the Mercantile Bank. On the next day the Slaughter note was charged against the credit of \$30,000. This would seem to have been done without authority or right and was an arbitrary unauthorized act.

"The bank cannot discharge its liability to account with the depositor to the extent of the deposit, except by the payment to him, or to the holder of a written order from him, usually in form of a check."

Leather Bank v. Merchants Bank, 124 U. S., 26, 34.

There was no mistake, confusion or misunderstanding about this \$30,000 balance. It was expressly acknowledged by the Mercantile Bank in its February statement. When and by what process did the Mercantile Bank lose the benefit of this credit? We are unable to find that it did lose this benefit.

It is further urged by defendant that there was fraud in the negotiation of the loan by defendant to the Slaughter. This is true, as C. C. Slaughter deliberately forged a portion of the collateral attached to the note discounted by the Mercantile Bank. It is also true that when the proceeds of that loan were transferred from the credit of W. B. Slaughter to that of the Mercantile Bank, the order

for transfer was given by C. C. Slaughter as cashier of the Mercantile Bank, the same man who in his private capacity had perpetrated the fraud upon the defendant. On these admitted facts defendant urges that even if the transfer of credit from W. B. Slaughter to the Mercantile Bank was upon good consideration, the knowledge of fraud possessed by C. C. Slaughter must be imputed to the Mercantile Bank.

As the Mercantile Bank innocently paid out \$25,000 on the faith of the expected transfer on the books of the Mercantile Bank, we think the consideration too obvious for discussion. As to the imputation to the Mercantile Bank of C. C. Slaughter's knowledge of his

own fraud, it was evidently to the latter's interest to conceal that knowledge, if he expected, as he obviously did, to be able to carry out the Silverton Bank transaction. Therefore what C. C. Slaughter knew is not to be imputed to the Mercantile Bank. The subject was sufficiently treated in our recent opinion in the Matter of the United States Hair Co.

As both parties hereto moved for the direction of a verdict there was no substantial question of fact to be decided. The law was correctly stated and applied by the trial judge, and the judgment is affirmed with costs.

277 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, Held at the Courtrooms in the Post Office Building in the City of New York, on the 19th Day of February, One Thousand Nine Hundred and Seventeen.

Present: Hon. Alfred C. Coxe, Hon. Henry Wade Rogers, Hon. Charles M. Hough, Circuit Judges.

HARRIMAN NATIONAL BANK OF NEW YORK, Plaintiff in Error,

v.

HARRY H. SELDOMRIDGE, as Receiver, etc., Defendant in Error.

Error to the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is affirmed with interest and costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

A. C. C.

278 Endorsed: United States Circuit Court of Appeals, Second Circuit. Harriman Bank v. H. H. Seldomridge. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 16, 1917. William Parkin, Clerk.

279 United States Circuit Court of Appeals for the Second Circuit.

THE HARRIMAN NATIONAL BANK OF NEW YORK, Plaintiff in Error,
against

HARRY H. SELDOMBRIDGE, as Receiver of the Mercantile National
Bank of Pueblo, Colorado, Defendant in Error.

Your petitioner, The Harriman National Bank of New York,
plaintiff in error in the above entitled cause, respectfully shows:

That the above entitled cause is now pending in the United States
Circuit Court of Appeals, for the Second Circuit, and a judgment
has therein been rendered on the 19th day of February, 1917,
affirming the judgment of the District Court of the United States,
for the Southern District of New York, and the matter in contro-
versy in said suit exceeds the sum of One thousand dollars (\$1,000.),
besides costs, and the jurisdiction of the Courts above mentioned
was not in any wise put in issue, nor was or is in any way ques-
tioned, and that this cause does not arise under the patent laws, or
the revenue laws, or the criminal laws, and is not an admiralty case,
and is a proper case to be reviewed by the Supreme Court of the
United States upon writ of error, and therefore your petitioner does
respectfully pray that a writ of error be allowed it in the above en-

280 titled cause directing the Clerk of the United States Circuit
Court of Appeals, for the Second Circuit to send the records
and proceedings in said cause, with all things concerning the
same, to the Supreme Court of the United States in order that the
errors complained of in the assignment of errors herewith filed by
said plaintiff in error may be reviewed, and if error be found, cor-
rected according to the laws and customs of the United States.

THE HARRIMAN NATIONAL BANK
OF NEW YORK, *Plaintiff in Error,*

By FREDERICK PHILLIPS, *Vice-President.*

Attest:

JOHN A. NOBLE, *Secretary.*

HENRY B. WESSELMAN,

*Attorney for The Harriman National
Bank of New York, Plaintiff in Error.*

UNITED STATES OF AMERICA,

State of New York,

County of New York, To wit:

Frederick Phillips, being duly sworn, according to law, deposes
and says that he is the Vice-President of The Harriman National
Bank of New York, plaintiff in error in the above entitled cause; that
the statements contained in the foregoing petition are true,

281 and that the writ of error therein prayed for is not taken for the purpose of delay but because the said plaintiff in error feels that an injustice has been done by reason of said judgment.

FREDERICK PHILLIPS.

Sworn to and subscribed before me this 30th day of March, 1917.

[Seal Harry Lesser, Notary Public, Bronx County.]

HARRY LESSER,
Notary Public, Bronx County.

Certificate filed in New York Co.

Order Allowing Writ of Error.

The foregoing petition is granted and writ of error allowed as prayed for, upon plaintiff in error giving a supersedeas bond, according to law, in the sum of thirty-five thousand dollars (\$35,000).

ALFRED C. COXE,
*Judge U. S. Circuit Court of
Appeals, Second Circuit.*

282 (Endorsed:) U. S. Circuit Court of Appeals, Second Circuit.

The Harriman National Bank of New York, Plaintiff in Error, against Harry H. Seldomridge, as Receiver, etc., Defendant in Error.

Petition.

Henry B. Wesselman, Attorneys, 55 Liberty Street, New York.

Service of a copy of the within is this day admitted.

New York, Apr. 4, 1917.

William A. Barber, Attorney for Defendant in Error.

United States Circuit Court of Appeals, Second Circuit. Filed Apl. 6, 1917. William Parkin, Clerk.

283 United States Circuit Court of Appeals for the Second Circuit.

THE HARRIMAN NATIONAL BANK OF NEW YORK, Plaintiff in Error
(Defendant Below),

against

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National Bank of Pueblo, Colorado, Defendant in Error (Plaintiff Below).

Now comes the plaintiff in error, The Harriman National Bank of New York, by Henry B. Wesselman, its attorney, and says that in the record and proceedings aforesaid of the United States Circuit Court of Appeals, for the Second Circuit in the above entitled cause, and in the rendition of the final judgment therein, manifest error

has intervened to the prejudice of the said plaintiff in error in this, to wit:

(1) The United States Circuit Court of Appeals, for the second Circuit erred in affirming the judgment of the District Court of the United States, for the Southern District of New York, entered on the 5th day of July, 1917, in favor of Harry H. Seldomridge, as Receiver of the Mercantile National Bank of Pueblo, Colorado, plaintiff in said cause, against plaintiff in error, defendant therein.

(2) The Circuit Court of Appeals erred in not reversing the said judgment.

284 (3) The District Court of the United States, for the Southern District of New York, erred in refusing to dismiss the plaintiff's complaint at the end of the plaintiff's case for the reason that plaintiff had failed to make out a prima facie case.

(4) The Circuit Court of appeals erred in affirming the action of the District Court in this regard.

(5) The District Court of the United States, for the Southern District of New York erred in receiving the testimony of W. B. Slaughter and permitting the witness to testify, over defendant's objection and exception, as follows:

"Q. Now, in paying for these cattle, did I understand you to say that your son Coney issued checks on your account with the First National Bank of Socorro, and signed your name by C. C. S."

Mr. Kraus: I make the same objection, as immaterial.

The Court: Objection overruled.

Mr. Kraus: Exception.

(Reading.)

"A. Yes, by C. C. S. That showed that he signed it.

"Q. And those checks were honored by your bank?

"A. Yes, by special agreement, you know. I sent him out to buy a special bunch of cattle, and he would draw on my account, and he would sign my name to the check and put his initials under it.

"Q. Then those checks were honored by your bank?

"A. Yes.

"Q. You didn't give Coney a permanent power of attorney to sign checks for you?

"A. No, I never gave any man a special form of attorney. I would just simply tell him to go out and buy a certain number of cattle, and if I couldn't go, I would tell him to draw on my account and sign the checks W. B. Slaughter by C. C. S., and not only him but other men have done that.

"Q. Were those the first checks against any bank account
285 of yours, so far as you recall——

"A. So far as I recall. He may have signed a few before that time, but that is the first I can recall."

(6) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(7) The District Court of the United States, for the Southern District of New York erred in receiving the testimony of W. B.

Slaughter and permitting the witness to testify, over defendant's objection and exception, as follows:

"Q. Did you own an automobile?

"A. Did I?

"Q. Yes.

"A. No, I didn't own an automobile. My wife bought one about the time I left, is the only automobile I had.

"Q. You paid for it, didn't you?"

Mr. Kraus: How is that material?

Mr. Gibboney: I don't see that it is very material.

Mr. Burditt: It was paid by a check signed by his son, and he admits it was properly drawn against the account.

Mr. Kraus: I think it is immaterial and irrelevant and incompetent, and it has no bearing on the issues.

The Court: I will let it in.

Mr. Kraus: Exception.

Mr. Burditt: (Reading.)

"— You paid for it, didn't you?

"A. I guess she paid for it.

"Q. It was an electric automobile, wasn't it?

"A. Yes.

"Q. Don't you know that you paid for it?

"A. That I signed a check for it?

"Q. Don't you know that you paid for it out of your bank account?

"A. Certainly it was paid for.

286 "Q. Don't you know that it was paid for out of your bank account at the Mercantile National Bank?

"A. It must have been she had some funds there, I don't know how much, I don't remember.

"Q. Well, you don't know whether it was paid out of your account or not?

"A. Out of mine or hers.

"Q. It was purchased from the Waverly Electric Company, wasn't it?

"A. Yes.

"Q. And you know it was paid for by a check that was signed by C. C. Slaughter, don't you?

"A. No, sir; I didn't know that.

"Q. Well, if he did sign such a check and had not called it to your attention, you would have had it honored, wouldn't you?

"A. I don't know whether I would or not. I don't know how he came to sign C. C. Slaughter to the check.

"Q. If he had signed the check W. B. Slaughter by C. C. Slaughter, you would have had it honored?

"A. Yes, if it was all right, yes.

"Q. For that automobile?

"A. Yes."

(8) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(9) The United States District Court, for the Southern District of New York erred in receiving the testimony of W. B. Slaughter and permitting the witness to testify, over defendant's objection and exception, to a conversation with a third party when defendant was not present, as follows:

"Q. Did you have any conversation with Mr. Grissard in which you told him, very shortly after you were elected president of the bank, that all checks drawn on your account signed by your son should be honored?"

Mr. Kraus: I object to that as immaterial and incompetent, and not binding upon this defendant, and not within the issues. Any conversations such as that could not bind us in any way.

The Court: I will overrule the objection.

Mr. Kraus: Exception.

The Court: This is only a circumstance indicating authority.

(Reading:)

287 "A. No, I did not. I may have told him that any of my checks with my name signed to them, by my son, a legitimate small check, to pay it and charge to my account."

(10) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(11) The United States District Court, for the Southern District of New York erred in receiving in evidence, over defendant's objection and exception, Plaintiff's Exhibit Numbered 14, which reads as follows:

"Bankers Trust Company,

Slaughter Building,

Dallas, Texas.

November Twenty-seventh, 1913.

Mr. C. C. Slaughter, Pueblo, Colorado.

DEAR CONEY: Your letter of the 25th in regard to the Post office matter have had up with Mr. Bellesfield before me, and in reply to the same will say that you had better handle this matter from the Bank. It might not sound good to Senator Thomas for me to write him from here; hence the importance of you writing him from there and signing my name.

So far as buying the Government Bonds is concerned, I am of the opinion when the Currency Measure passes these bonds we have will be sold at a loss, or, in other words, they will depreciate in value, and this bond business is a matter that you had better study carefully. However, I shall leave the entire matter to your good judgment.

Would be pleased if you would send me a copy of the letter you write Senator Thomas and also Burleson, but handle it from home.

Hoping everything is coming on nicely and with kindest
288 personal regards to each, I beg to remain, as ever,
Your Dad,

W. B. SLAUGHTER."

W. B. S./F.

(12) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(13) The United States District Court, for the Southern District of New York erred in receiving in evidence, over defendant's objection and exception, Plaintiff's Exhibit Numbered 15, which reads as follows:

"December the Second, 1913.

Mr. W. B. Slaughter, Dallas, Texas.

My DEAR DAD: I have your favor of the 27th and before the same reached me I had previously taken the matter up with Mr. C. E. Thomas and I am herewith handing you copy of the same, which I will ask you to return to us for our files after you have read the same, for this is the only copy we have. The thought struck me the same as you, that when we were offered this Post Office account it would require a large outlet of money for government bonds. However, we will only have to take such an account as we would want. That is, say about \$5,000.00 of bonds and remit the balance each day. I believe this would be a good advertisement. At the same time I wrote Senator Thomas I also wrote our correspondent in Chicago and am to-day writing our New York correspondent, getting their views as to how would be the best way to handle this, or would they advise us to consider the same.

Just at this time we would hardly feel justified in making investments in Government Bonds. They are at 96 I understand this morning. I signed my own name to this former letter, but as soon as I hear, I will have Will Wheatley sign your name and write him more fully.

I have made no headway regarding our taking on the First National Bank Building for the reason I do not believe George
289 Meston will surrender the present lease to us under any consideration and I explained to Mr. Middlekamp we would not care to make a trade with him for his bank building pending our getting away from Meston as it would cause hard feelings and we might be forced to stay here for sometime.

I also notice you have paid Charlie Williams for automobile fees which I believe is a good idea.

Trusting everything is coming along nicely with you, I am
Your son,"

(14) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(15) The United States District Court, for the Southern District of New York erred in receiving in evidence, over defendant's objection and exception, Plaintiff's Exhibit Numbered 16, which reads as follows:

"Bankers Trust Company,

Slaughter Building,

Dallas, Texas.

December the Fifth, 1913.

Mr. C. C. Slaughter, Cashier, The Mercantile National Bank, Pueblo, Colorado.

DEAR CONEY: Your letter of the 2nd with copy of letter to Senator Thomas received and contents noted.

In reply to the same will say that it is not best for me to write to Thomas from here. You can have the letters written from Pueblo and have more effect.

I notice that you are having severe snow storms in Colorado. I presume they have reached down to the Panhandle, but have not heard from there. We have had incessant rains here for the past six weeks.

I think your mother and the baby will start home next 290 Sunday week, and I will try and get there the last of the week, if possible. I don't know just at this time where I will have to go before going to Colorado. I am likely to be called to some distant place, and if I am, I will go from there on home.

I presume our steers are in the feed lots at Elk City this morning and that I will hear from them during the day.

Hoping everything is coming along nicely, I beg to remain, as ever,

Your Dad,

W. B. SLAUGHTER.

P. S.—I herewith return you the Thomas letter.

W. B. S."

(16) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(17) The United States District Court, for the Southern District of New York erred in receiving in evidence, over defendant's objection and exception, Plaintiff's Exhibit Numbered 19A, which reads as follows:

"The Mercantile National Bank of Pueblo,
United States Depositary.

Pueblo, Colo.,

Jan. 16, 1912.

Pay to the order of W. S. Walpole \$5,000. Five Thousand no/100 Dollars.

W. B. SLAUGHTER,
C. C. SLAUGHTER,
By C. C. S.

For phone stock.
(Stamped, Paid 1/17/12.)
Stamped on face: (Counter check.)"

Endorsed: First National Bank. Paid Jan. 17, 1912. Clearings, Pueblo, Colo.

291 (18) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(19) The United States District Court, for the Southern District of New York erred in receiving the testimony of W. B. Slaughter and permitting the witness to testify over defendant's objection and exception, to a conversation with a third party had when defendant was not present, as follows:

"Q. To refresh your recollection as to the time, do you recall being in Denver and going from Denver to Pueblo with Mr. Thatcher?

"A. Yes, sir. * * *

"Q. Do you know how long ago that was?

"A. I guess it was in eleven, wasn't it?

"Q. Mr. Thatcher says it was three or four years ago. That would make it 1911 or 1912, about?

"A. I think it was in eleven. It may have been twelve.

"Q. Now, did you on the train coming from Denver to Pueblo, talk with Mr. Thatcher about the two banks at Silverton?

"A. Yes.

"Q. Do you recall what that conversation was?"

Mr. Kraus: That is objected to as immaterial and not binding on this defendant, and as having no bearing on the issues.

The Court: I will overrule the objection.

Mr. Kraus: Exception.

"Q. Yes, we talked about there not being business enough there for two banks and about consolidating them, or one buying the other out, and I told him I was perfectly willing to dispose of my interest, and whenever the time came I was perfectly willing to turn loose of my interest, or buy his. I have forgot the conversation.

"Q. Was the conversation in substance as you have related now?
 "A. Yes."

(20) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

292 (21) The United States District Court, for the Southern District of New York erred in receiving in evidence, over defendant's objection and exception, plaintiff's exhibit numbered 20, which reads as follows:

"Jan. 10th, 1912.

Personal.

Mr. C. C. Slaughter, Cashier, Mercantile National Bank, Pueblo, Colorado.

DEAR MR. SLAUGHTER: Your letter of the 4th instant just received, enclosing joint note made by your father W. B. Slaughter, and yourself, for \$25,000 maturing May 1st, 1912, and secured by 200 shares First National Bank, Dalhart; 70 shares, Silverton National Bank, Silverton, Colorado, and \$20,000 bills receivable, being two notes of 10,000 each, made by C. E. Oakes and Charles E. Oakes.

I note your remarks in your letter relative to this paper and concur with you in the hope that our relations entered into will be most harmonious and satisfactory, and to this end I have wired you as follows, which I hereby confirm:

'Letter Fourth and enclosures received, but not in accordance with understanding. See my letter December 27th. Neither Stratford Bank nor Mercantile Pueblo Bank stock included in collateral, nor information regarding the character, worth and standing of makers of receivables. Best to start right always, then no misunderstanding. Am writing you full tonight. Do nothing until you receive my letter.'

We are very desirous of doing business with you, but it must be according to the terms agreed upon, and as outlined in our recent interview and correspondence. If you will refer to my letter of December 27th, you will find that I stated we would be pleased to extend a loan of \$25,000 secured by stock of the First National Bank of Dalhart, the First National Bank of Stratford, and some of the stock of the Silverton National Bank, together with receivables to the amount of \$20,000 and that upon receipt of your note duly executed and collateral with stock and securities above mentioned we would discount same and credit the amount to the Mercantile National of Pueblo, now opening with us, with the proceeds and for your personal use.

293 By referring to the proposition agreed to by Mr. Jones of the Park Bank, under date of October 16th, a copy of which letter you allowed me to retain, I find that you offered two hundred and fifty shares of the First National Bank of Dalhart, and twenty-five shares of the First National Bank of Stratford, and you were also to send us information respecting the character, worth

and standing of the number or numbers and amount or amounts of the receivables lodged as additional collateral, and which we now find to be the two notes of \$10,000 each, above described.

While we do not question the value of the stock of the Silverton National Bank, we would much prefer that the original average amount be adhered to, and to that end we would request that you send us the additional fifty shares of First National Bank of Boston, which we will retain and also the twenty-five shares of the First National Bank of Stamford which you have previously suggested to exchange; and we will also take advantage of your offer to send us stock of the Massachusetts National Bank to the amount of \$200,000. This is no reflection whatever upon the security which — have now offered us, but as the market has been depressed in this stage we would much prefer that the transaction go through as agreed.

I find in looking over the collection, that although we asked particularly that the bank shares you forwarded should be in negotiable form, duly signed and witnessed, I return to you Certificate No. 75 for twenty shares of First National Bank of Baltimore, in the name of W. B. Shughart, but which has not been witnessed, the Certificate No. 29 for twenty shares of Silverton National Bank stock, in the name of W. B. Shughart, which is endorsed and witnessed in full paid.

In returning these in proper shape, together with the stock of the First National Bank of Stamford and stock of the Mercantile National Bank of Buffalo, please do not forget to give me all information which you have regarding the affairs of the associates, which you have forwarded to me in conjunction with the above described enclosed.

I enclose you new note for \$25,000 maturing May 1st, 1912, secured by 250 shares First National Bank of Dallas, Texas, 25 shares First National Bank of Stamford, 50 shares of the Southern National Bank, Silveston, Colorado, and two notes of \$10,000 each maturing January 15th, 1912, made by C. E. Quinn and Charles E. Quinn, jointly.

Upon receipt of the new note and the collateral as an
294 enclosing herewith, returned in proper shape and accom-
panied by the required collateral described, it will be our
great pleasure to place the proceeds of this accommodation to
you to the credit of the Mercantile National Bank of Public, for the per-
sonal use of Mr. W. B. Shafter.

Very Good 4.0000

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 84

P. 8.—Many upon this kind of an obligation is constantly sold 67½. Please tell us the rate the question of shares of the Worcester National Bank stock, informing us in your letter of the bank value.

(22) The Circuit Court of Appeals acted in affirming the action of the District Court in this regard.

(23) The United States District Court, for the Southern District of New York acted in receiving the testimony of the witness W. D.

Slaughter, and permitting him to traffic, over the defendant's objection and objection, to a conversation that he had with his son (Cory Slaughter during the absence of the defendant), which testimony is as follows:

"Q. Did you tell your son that if he could make the strongest case to pay for the stock it was all right to go ahead and buy it?"

Mr. Evans: I object to that as immaterial and not tending upon the defendant, and having no bearing on the issue. It is a matter between two private parties.

Mr. Attorney: He said he talked with his son in St. Paul in March.

The Court: Objection.

Mr. Evans: Exception.

(Reading.)

"A. I told him when I met him at St. Paul, he told me he thought the bank, and I told him that you pay for it, you didn't pay for it, you really want to pay for that bank, that was what he said to me, I didn't take it all, and that everything would be explained."

"Q. Did he tell you he had borrowed any money at the National Bank?"

"A. No, he didn't tell me he had borrowed any money."

"Q. You didn't know he had borrowed any money?"

"A. No, I didn't know about the conditions until I got up there."

"Q. Did he tell you he would have a lot of the stock named to you?"

"A. I don't remember whether he told me that or not, I don't think he did."

"Q. Did he tell you he would have you elected president?"

"A. Yes, he told me that it was the intention to have me go in as president, and I told him I wouldn't go in as president. I told him I was president of the St. Paul National Bank and I was satisfied with that."

"Q. What else was said at that conversation at St. Paul?"

"A. As to who should run the bank."

"Q. What was that?"

"A. That if I had taken the bank and got my money in the bank, the man that was to be in it was to run it, Mr. Washburn."

"Q. What date was that?"

"A. I think that was the first Tuesday in March. I think that was when the convention convened there."

"Q. Who was present at that convention?"

"A. Nobody but he and I, nothing, no more just sitting there."

"Q. You and your son?"

"A. Yes."

"Q. When? Mr. Washburn there?"

"A. Later on, you know, there were and no other things were there generally, in the presence."

"Q. He came down there with your son, didn't he?"

Q. Did you ask him where your stock in the Mercantile National Bank was?

A. Did I ask him?

Q. Yes?

A. No, I had no occasion to ask him.

Q. When was it?

A. It ought to have been in my box.

Q. He went too?

A. Yes, at the Mercantile National Bank at Pueblo."

(26) The Circuit Court of Appeals acted in affirming the action of the District Court in this regard.

(27) The United States District Court, for the Southern District of New York acted in receiving in evidence, over defendant's objection and exception, the letter written to W. H. Shugliter by the son, dated January 20th, 1917, marked Plaintiff's Exhibit 25, reading as follows:

January the Twenty-fifth, 1917.

Mr. W. H. Shugliter, Dallas, Texas.

My Dear Dad: I am just in receipt of your favor of the 23rd and of course regret very much you have such a severe cold and that at the time this letter reaches Dallas you will have fully recovered. There is still no hope here having fine weather in Kansas. We had no snow in Oklahoma Springs yesterday afternoon having about 2.00 and got back about 7.00 in the evening. We had the open car and did not feel the cold at all. However, it is snowing this morning but not very much.

I have written you fully regarding the Fletcher deal but I have not at the time been anything together in the matter. As far as the time he was talking about the matter, he seemed to be of the opinion we should keep one of the men for a short time which I agreed to do as he claimed it was more or less of a responsibility in transferring a bank on account of the National Banking Law. I am sure we would be very glad to have him remain on the Board of Directors for six or nine months if he wanted to do so. While of course, if he refuses it will be to our advantage to keep one of one of them men for six or nine months until we get thoroughly familiar with the conditions.

If the two banks can be put together and made pay it seems to me it can be made a paying proposition. Furthermore, having the capital stock on a basis of \$5.00 would make it worth \$20,000,000 and we can have an investment up there of something like \$20,000,000 hence there would only be an outlay of something like \$5,000,000. Of course, I suppose it will take one or three weeks before we absolutely get the correct data. It is very essential that I see you and go over the matter, but I presume I can arrange to come to the nation's convention at St. Louis which I believe is about the first or March and we can talk

matters over thoroughly; or, if I cannot get off you can return by Dalhart and I can meet you there.

I notice what Mr. Wright says in regard to the Oakes business and it seems to me you are on the ground and president of this bank and have full authority to act. My idea was to get hold of the stock in his store if possible. Mr. Wright knows the situation very fully and naturally we should follow his instructions. You now have the stock securing Mr. Oakes' note in your possession and I will send the note to you and you can take whatever action you desire.

Do not believe I have written you that we have been designated depositary for the Southern Ute Agency. We are forced to put up a surety bond for this of \$55,000.00 with them and they are to deposit like amount with us. We will pay $3\frac{1}{2}\%$ on daily balances and time deposits. The money costs up \$5.50 a thousand. I have already furnished the bond and presume I will receive the deposit in the next few days.

I am very much surprised my mother's furniture has not begun to arrive as I paid Mr. Calkins for this some few days ago and presume it will put in appearance before this.

I notice you enclose the notification of your income tax and desire to state I will make up your income tax in accordance with the statement of last year — forward to you immediately in order you can sign and send to the Internal Revenue collector in Texas. Last year we sent this to Mr. Skinner at Denver, but you are now a resident of Texas and I will write Mr. Skinner to this effect.

I neglected to send a copy of letter I wrote to Mr. Goodell the other day. Please return this copy when it has served its purpose. Up to this time I have not communicated with Mr. Goodell regarding the Silverton National Bank, as I did not want to take the matter up until I was sure we would make a trade with Mr. Thatcher, as there is no use running head long into this agreement until we are thoroughly satisfied we are not going to get the worst of it. Do not believe there is any additional news to write.

Your son,"

299 (26) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(27) The United States District Court, for the Southern District of New York erred in receiving in evidence over defendant's objection and exception, the letter written to W. B. Slaughter by his son C. C. Slaughter, dated January 22nd, 1915, marked Plaintiff's Exhibit 45, and reading as follows:

"January the Twenty-second, 1915.

Mr. W. B. Slaughter, Dallas, Texas.

DEAR DAD: I am in receipt of your favor of the 20th and note what you say with reference to the Silverton Bank. However, I had hoped you would arrange to come up here and go over the

matter. I took the matter up with Mr. Thatcher this A. M. and had a very pleasant visit and while we did not come to any terms for he had no substantial evidence as to the conditions his bank was in, but assured me it was good and that he would have some evidence in the course of the next few days and would advise me.

In order I could take the matter up intelligently with Mr. Thatcher, I herewith enclose a letter which I showed him which is supposed to be from yourself. Of course, if you do not approve of this letter and the contents, you had better wire me as I have already shown Mr. Thatcher the letter. In all probabilities we will be forced to pay \$140.00 for this stock but we did not get that far along with the exception he did agree we would pay one-half cash and the balance October 15th, he holding stock to the par value.

Please put the carbon of this letter in your files in order you will know what I said to him if the occasion ever arises. Of course, I have no idea of making a deal unless he absolutely agrees to only have one bank in Silverton. Of course, it is possible that another bank might start there but I hardly believe so at this time.

I ordered a Federal Reserve Manual sent you at the cost of \$5.00 to ourselves, which I presume you have received ere this and
 300 I am herewith enclosing check for \$5.00 to them, together with the bill and if you like the manual and think it will be of service to you you can send the check to them together with the bill, otherwise return the manual to them and the check to us.

Am also enclosing a letter which I received from Mr. Smith, which, after you have read and answered, please return to me. This makes me hesitate about Smith and I believe if we do not close the deal at Silverton, we will put someone up there to relieve him in a short time, as it seems all the men we have want to borrow some money from us, which I do not think looks good.

I wrote to Mr. Smith in all probabilities you could come up as I thought you would and I wanted to have him prepared. Of course, he knows nothing of our figuring on buying the other bank and I do not want him to know until the deal is closed. Please return his letter to me as soon as it has served its purpose.

With love to all, I remain,

Your son,"

(28) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(29) The United States District Court, for the Southern District of New York erred in receiving in evidence, over defendant's objection and exception, the letter written to W. B. Slaughter by his son C. C. Slaughter, dated February 3rd, marked Plaintiff's Exhibit 46, and reading as follows:

"February the Third, 1915.

Mr. W. B. Slaughter, Dallas, Texas.

DEAR DAD: I am in receipt in this morning's mail of the Prospectus of the Bankers Trust Company and believe it is a good ad-

vertisement and you are to be congratulated on getting out such an attractive folder, but I must confess I do not believe that the picture of yourself and others are as good as they might have been. I wish you would send me a half a dozen of these in order I can distribute them to some people that I think I can possibly
301 sell some stock to a little later on.

I have not closed the deal with Mr. Thatcher up to this time as I am not thoroughly convinced the bonds are worth the value he is carrying them on his books. While I can appreciate that during the present money stringency these bonds are off a little to what they could be and of course a few points would not be any great difference at this writing, but he had some Great Northern Railway bonds at 5 which I do not believe are very good and I question very seriously if they could be sold at 50 cents. I am very much impressed with the method they keep the bank in.

I tried very hard to get in touch with Mr. Smith last Friday in order to come to Pueblo and go over the matter. I have given Mr. Thatcher my assurance I would not say anything to any of our employees about it. But I did have his permission to have one of them come to Pueblo if I would not disclose my mission. To my surprise I could not locate Mr. Smith at Silverton and nobody seemed to know where I could get him. Last night I got him at Durango. He stated he had been feeling badly and had been away from Silverton about a week, but he had got snow-bound or something like that and I asked him to come to Pueblo and he did not feel disposed to do so.

I am thoroughly disgusted with the manner in which he is doing business and you cannot depend on him for anything. You gave him positive instructions at Dallas that under no circumstances should he leave Silverton without first advising us, but it seems he does not do what he is asked to do and disregards instructions altogether. I would hardly want him to try to run this large bank with all its assets if this is the manner of doing business.

With reference to his \$1,000.00 note I told him I would see you at the cattle convention and we would go over the matter and come to some understanding. I herewith enclose copy of letter I have written him today, as I think it is very essential we make this 30-cent assessment in order to get out about \$7,000.00 bills receivable which I believe are bad. Among them is the Jackson paper. Mr. Smith furnished a list sometime ago which I misplaced and I am asking him in my letter to send me a list of the notes we should take out of the bank and presume he will do so.

I would state I have made arrangements with the Harriman National Bank for them to assist us in carrying this deal of the First National Bank through if we consummate it, or at least until I get
302 opportunity to make the deal according to my own ideas. I believe I hold one of the notes signed by you to the Harriman National Bank, hence I will not send it to you but send it direct to them. It will be for \$30,000 if they should ask you how much or anything about it.

I also have your favor of February 1st and note what the James-

Michkle-Schow Company say and furthermore desire to state I sent you the note in accordance with your wishes and as I stated I do not believe you will find Mr. Oakes owns any stock in the Company in his name, but of course, if the suit will accomplish what your letter states, that is, it will give us jurisdiction on the stock up as collateral, I do not see any reason why we should not do as you suggest, but you sometimes sue people in order to get a judgment and then that is the end of it and we never get anything out of the suit. Believe I have about covered all the points necessary.

Your son,"

(30) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(31) The United States District Court, for the Southern District of New York erred in receiving in evidence, over defendant's objection and exception, the letter written to W. B. Slaughter by his son C. C. Slaughter, dated February 7th, 1915, marked Plaintiff's Exhibit 47, and reading as follows:

"February the Seventh, 1915.

Mr. W. B. Slaughter, Dallas, Texas.

MY DEAR DAD: I presume it will be of interest to you to know we have closed the deal with Mr. M. D. Thatcher for the First National Bank of Silverton, paying \$70,000.00 for the same, along lines I have heretofore written you. I am to-day writing the Comptroller of the Currency, copy of letter enclosed herein, in order you will know what I have written and you had better keep all of this correspondence separate in order you can verify same if necessary.

303 Mr. Thatcher went to California Saturday night, hence it was imperative that we close or let the matter rest until he returns. Mr. Goodell was in the bank yesterday morning and we had quite a long talk. While he was hardly in favor of our buying for he felt possibly the town would remain about as it is and he finally agreed it was to our best interest to either sell or buy. I desire to state we have not been able to get into communication with Silverton since Thursday, as there was a very heavy snow storm and there has been snow slides and it is completely shut off. In fact, the railroad will not sell tickets any further than Durango.

Mr. Thatcher advised them yesterday we had bought their interest, etc. Of course, I have not told Smith or anyone up to this time, that we have made the purchase and will not do so until everything is arranged as I thought we would have someone go over and make the necessary arrangements after we received the necessary instructions from the Comptroller. I have agreed with Mr. Thatcher we will keep all the present employees for 30 days, as it will require at least that time to get the consent of the Comptroller and get the two banks into consolidation. My idea is that we will liquidate the Silverton National for the purpose of going into consolidation with the First National.

I am also writing Mr. Werkheiser the Cashier of the First National

Bank, as per the enclosed copy, as he will be the cashier for the next 30 days. Hence, if you care to write him, do so. I have had you elected President of the bank and myself Vice-President, as I find I do not have sufficient authority with these banks unless I have an official position. You will also be a director as well as myself, and presume we will have to get some of the citizens for the directors. Think you had better write Mr. Cunningham at Silverton regarding the deal, asking for suggestions, etc.

I believe I told you I asked Mr. Smith to come to Pueblo but for some reason he did not feel disposed to do so. I do not know whether he has returned to Silverton yet or not for the night I telephone him was the night they had a very heavy slide on the railroad.

Will send you a complete statement of the loans, etc. on Monday.

Your son,"

(32) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

304 (33) The United States District Court, for the Southern District of New York erred in receiving the testimony of the witness John H. Werkheiser and permitting him to testify, over defendant's objection and exception, to a conversation had with a third party while the defendant was absent, and after the transaction with the defendant had been consummated, as follows:

"Q. Now, who did you meet at El Paso, Texas?

"A. C. C. Slaughter and W. B. Slaughter.

"Q. And did you have a conversation there on either March 2nd or 3rd with either C. C. Slaughter or W. B. Slaughter?

"A. I did.

"Q. Will you, so far as you can recollect, give in full the substance of that conversation, stating by whom the different things were said?"

Mr. Kraus: That is objected to as incompetent and immaterial; too remote from the transaction, and too long after it took place, and not binding upon the defendant.

The Court: Overruled.

Mr. Kraus: Exception.

Mr. Burditt (reading):

"A. As near as I can recall our conversation at the Paso Del Norte—in the lobby of the Paso Del Norte Hotel—was in regard to the affairs of the bank, and that a consolidation was to be made, and the capital stock was in question, as to whether it would be advisable to increase the capital stock of the First National after the consolidation or not; Mr. W. B. Slaughter said he wasn't fully in sympathy with it. I think he said 'Coney here thinks you ought to increase the capital to give more prestige to the bank, and you could probably use it.' And I said my opinion was that an increase in the capital stock was not necessary, there wouldn't be any advantage or any profit in increasing the capital stock. * * *

"Q. Was there anything in the conversation as to W. B. Slaughter's ownership of the stock of the bank?

"A. Why, it was understood by all of us that they were owners.

"Q. What was said, Mr. Werkheiser?

"A. I don't know as I can just recall.

305 "Q. Was anything said by W. B. Slaughter as to his having invested money in the bank?

"A. Yes, I think that was——

"Q. What was it?

"A. That he had bought; he and C. C. Slaughter owned the bank, controlled it, and it was that understanding, it seems to me.'

Mr. Kraus: I move to strike out 'and it was that understanding, it seems to me.'

Mr. Gibboney: We consent.

Mr. Kraus: Strike out the answer that he had bought; he and C. C. Slaughter owned the bank, and 'it was that understanding, it seems to me.' When he says that understanding, he means all of this that you have read.

Mr. Gibboney: I will consent that that understanding be stricken out.

Mr. Kraus: No, I ask that the whole paragraph be stricken out.

Mr. Burditt: The question before was, "Was anything said by Mr. W. B. Slaughter as to his having invested money in the bank?"

"A. Yes.

"Q. What was it?"

The Court: I will let it stay in.

Mr. Kraus: I take an exception.

The Court: Yes.

Mr. Burditt (reading):

"Q. Who asked you to remain in the bank as cashier?

"A. Mr. W. B. Slaughter and C. C. Slaughter, both. * * *

"Q. Did he tell you that you could take up different matters that came along with C. C. Slaughter?

"A. He did.

"Q. W. B. Slaughter told you that?

"A. Yes, sir."

(34) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(35) The United States District Court, for the Southern District of New York erred in refusing to dismiss the plaintiff's complaint
306 at the close of the entire case for the reason that the plaintiff had failed to make out a prima facie case.

(36) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(37) The United States District Court, for the Southern District of New York erred in refusing to direct a verdict for the defendant.

(38) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(39) The United States District Court, for the Southern District of New York erred in denying defendant's motion for a new trial upon the law and upon the facts.

(40) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(41) That upon the law and upon the facts the United States District Court, for the Southern District of New York should have directed a verdict for the defendant in that there was no evidence offered by the plaintiff to substantiate a verdict for the plaintiff.

(42) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(43) The United States District Court, for the Southern District of New York erred in directing a verdict for the plaintiff and in refusing to direct a verdict for the defendant in that defendant was entitled to the direction of a verdict as a matter of law upon the
307 evidence offered at the trial herein.

(44) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(45) The United States District Court, for the Southern District of New York erred in finding that the Mercantile National Bank of Pueblo, Colorado, had nothing to do in the procurement of the loan from the defendant upon false and forged signatures and fictitious collateral.

(46) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(47) The United States District Court, for the Southern District of New York erred in finding that the Mercantile National Bank of Pueblo, Colorado, was not a participant in the fraud practiced on the defendant.

(48) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(49) The United States District Court, for the Southern District of New York erred in finding that the Mercantile National Bank of Pueblo, Colorado, did not benefit from the transaction between William B. Slaughter, Coney C. Slaughter and the defendant, whereby the defendant was induced to loan the sum of Thirty thousand dollars upon false and forged signatures and upon fictitious and forged collateral.

(50) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(51) The United States District Court, for the Southern
308 District of New York erred in finding that C. C. Slaughter had authority from W. B. Slaughter to direct the transfer of the said sum of Thirty thousand dollars, agreed to be loaned to William B. Slaughter by the defendant, to the credit of the Mercantile National Bank of Pueblo, Colorado.

(52) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(53) The United States District Court, for the Southern District of New York, erred in finding that C. C. Slaughter had authority from W. B. Slaughter to negotiate from the defendant for said W. B. Slaughter, the loan of Thirty thousand dollars aforesaid.

(54) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(55) The United States District Court, for the Southern District of New York, erred in finding that the knowledge of the Cashier of the Mercantile National Bank of Pueblo, Colorado, and the knowledge of the President of said bank, as to the fraudulent nature of the transaction with The Harriman National Bank, was not the knowledge of the Mercantile National Bank of Pueblo, Colorado, and that such knowledge did not serve as notice of the fraud practiced, to the Mercantile National Bank of Pueblo, Colorado.

(56) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(57) The United States District Court, for the Southern District of New York erred in finding that in the negotiation or consummation, or both, of the transaction between the Mercantile National Bank of Pueblo, Colorado, and The Harriman National Bank of New York, the interest of C. C. Slaughter, was adverse to that of the Mercantile National Bank of Pueblo, Colorado.

(58) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(59) The United States District Court, for the Southern District of New York erred in finding that it should be assumed that C. C. Slaughter kept the knowledge of the fraud to himself because to disclose it would subject him to criminal responsibility.

(60) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(61) The United States District Court, for the Southern District of New York erred in not finding that the Mercantile National Bank of Pueblo, Colorado, applied the proceeds of the loan of Thirty Thousand dollars, made by the defendant to W. B. Slaughter, to the payment of the pre-existing debt.

(62) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(63) The United States District Court, for the Southern District of New York erred in finding that the Mercantile National Bank of Pueblo, Colorado, paid W. B. Slaughter's check of Thirty-five thousand dollars drawn on it on the faith of the transfer of the

310 Thirty thousand dollars on deposit to the credit of W. B. Slaughter at the Harriman National Bank, to it.

(64) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(65) The United States District Court, for the Southern District of New York erred in finding that the Mercantile National Bank of Pueblo, Colorado, was in no better position financially after the transaction than before, and that it received no financial benefits from the transaction.

(66) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(67) The United States District Court, for the Southern District of New York erred in finding that the Mercantile National Bank ought not to be charged with the knowledge of its cashier of the fraud practiced on the defendant.

(68) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(69) The United States District Court, for the Southern District of New York erred in finding that the Mercantile National Bank of Pueblo, Colorado, would not have parted with its money as it did in honoring the check of W. B. Slaughter for Thirty-five thousand dollars, had there been disclosed to it the fraud practiced on The Harriman National Bank, and further erred in finding that there is a presumption that not having disclosed the fraud then, he would not thereafter have disclosed it.

311 (70) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

(71) The United States District Court, for the Southern District of New York, erred in finding that actual disclosure of the fraud committed by C. C. Slaughter on the defendant, was necessary in order to charge the Mercantile National Bank of Pueblo, Colorado, of which he was Cashier, with notice thereof.

(72) The Circuit Court of Appeals erred in affirming the action of the District Court in this regard.

Therefore the plaintiff in error, The Harriman National Bank of New York, prays that the judgment of the Circuit Court of Appeals, for the Second Circuit may be reversed; that the verdict and the judgment of the District Court of the United States, for the Southern District of New York may be set aside and a new trial granted.

THE HARRIMAN NATIONAL BANK OF NEW YORK,

By HENRY B. WESSELMAN, *Attorney.*

Presented April 4, 1917. Alfred C. Coxe, U. S. Cir. Judge.

312 (Endorsed:) United States Circuit Court of Appeals for the Second Circuit.

The Harriman National Bank of New York, Plaintiff in Error, against Harry H. Seldomridge, as Receiver, etc., Defendant in Error.

Assignment of Errors.

Henry B. Wesselman, Attorneys, 55 Liberty Street, New York.

United States Circuit Court of Appeals, Second Circuit. Filed Apl. 6, 1917. William Parkin, Clerk.

313

Bond for Damages and Costs.

A.

District Court of the United States of America for the Southern
District of New York, in the Second Circuit.

HARRIMAN NATIONAL BANK OF NEW YORK, Plaintiff in Error,

VS.

HARRY H. SELDOMBRIDGE, as Receiver of the Mercantile National
Bank of Pueblo, Colorado, Defendant in Error.

Know all Men by these Presents: That we Harriman National Bank, of New York as Principal, and the United States Fidelity and Guaranty Company, having an office and usual place of business at No. 47 Cedar Street, in the City of New York, County and State of New York, as Surety, are held and firmly bound unto the above named Harry H. Seldombridge, as Receiver of the Mercantile National Bank of Pueblo, Colorado, in the sum of Thirty five thousand (\$35,000.00) dollars, to be paid to the said Harry H. Seldombridge, as Receiver, etc. for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, representatives, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 5th day of April, 1917.

Whereas the above named Harriman National Bank of New York has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit, in the District Court of the United States for the Southern District of New York.

Now, therefore, the condition of this obligation is such, that if the above named Harriman National Bank of New York shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.]

THE HARRIMAN NATIONAL BANK
OF THE CITY OF NEW YORK.

THOMAS B. CLARKE, Jr.,

Vice-Pres. [L. S.]

[SEAL.]

UNITED STATES FIDELITY AND
GUARANTY COMPANY,

By ALONZO GORE OAKLEY,

Attorney-in-Fact.

Attest:

S. FRANK HEDGES,

Attorney-in-Fact.

114 *Sworn of New York.**County of New York, ss:*

On this 5th day of April, 1907, before me personally come those Case O'Leary, known to me to be the Attorney-in-fact of the United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of Marine National Bank of New York as surety thereon, who being by me duly sworn, depose and say, that he resides in the City of New York, State of New York, and that he is the Attorney-in-fact of the said United States Fidelity and Guaranty Company; and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of Maryland; that said Company is compliant with the provisions of the Act of Congress of August 15, 1904, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to the annexed bond of Marine National Bank of New York is the corporate seal of the said United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by the order and authority as Attorney-in-fact of said Company; and that he is acquainted with & Frank Bridges, and knows him to be the Attorney-in-fact of said Company; and that the signature of said & Frank Bridges attached to said bond is in the genuine handwriting of said & Frank Bridges and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the sum of said Company, uncompensated and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two million dollars (\$2,000,000.00).

WITNESSE OUR HANDS AND SEAL.

Sworn to, acknowledged before me, and subscribed to my presence this 5th day of April, 1907.

WILLIAM J. HOWLAND,

*Solving Public, New York County, N.Y. 705;
Register's No. 3018, Certificate filed in
County's No. 12; Register's No. 300; Home
No. 2; Register's No. 300; Queens Co. No.
300; Richmond, Westchester, —, Put-
nam, Orange and Suffolk Counties.*

Given Register Mar. 30, 1907.

[Enclosed:] Marine Court of the United States for the Southern District of New York.

Marine National Bank of New York, Plaintiff, against Harry M. Rothenthal, as Receiver, &c., Defendant.

Bond for Damages and Costs.

Surety: United States Fidelity and Guaranty Company, 47 Wall Street, New York.

rected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, 317 to the Supreme Court of the United States, together with this writ so that you have the same in the Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 4th day of April, in the year of our Lord one thousand nine hundred and seventeen.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,

*Clerk of the United States Circuit Court of
Appeals for the Second Circuit.*

Allowed by:

ALFRED C. COXE,
U. S. Circuit Judge.

Copy of writ of error for adverse party lodged in the Clerk's office this — day of March, 1917.

— — —, *Clerk.*

318 [Endorsed:] United States Circuit Court of Appeals, for the Second Circuit.

The Harriman National Bank of New York, Plaintiff in Error, against Harry H. Seldomridge, as Receiver, etc., Defendant in Error. Original.

Writ of Error.

Henry B. Wesselman Attorney, 55 Liberty Street, New York.

Service of a copy of the within is this day admitted.

New York, April 4, 1917. William A. Barber, Attorney for Defendant in Error.

United States Circuit Court of Appeals, Second Circuit. Filed Apr. 6, 1917. William Parkin, Clerk.

319 United States Circuit Court of Appeals for the Second Circuit.

THE HARRIMAN NATIONAL BANK OF NEW YORK, Plaintiff in Error,
against

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National
Bank of Pueblo, Colorado, Defendant in Error.

Citation.

THE UNITED STATES OF AMERICA, ss:

The President of the United States to Harry H. Seldomridge, as Receiver of the Mercantile National Bank of Pueblo, Colorado, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington, D. C., within (30) days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of Appeals of the United States for the Second Circuit, and wherein the Harriman National Bank of New York is Plaintiff in Error and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against the said The Harriman National Bank of New York, Plaintiff in Error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

320 Witness the Honorable Edward D. White, Chief Justice of the United States, this 4th day of April, in the year of our Lord one thousand nine hundred and seventeen.

ALFRED C. COXE,
*Judge U. S. Circuit Court of
Appeals, Second Circuit.*

Service acknowledged of a copy of the above on April 4, 1917.

WILLIAM A. BARBER,
*For Harry H. Seldomridge, as Receiver
of the Mercantile National Bank of
Pueblo, Colorado.*

321 [Endorsed:] U. S. Circuit Court of Appeals, Second Circuit.

The Harriman National Bank of New York, Plaintiff in Error, against Harry H. Seldomridge, as Receiver, etc., Defendant in Error.

Original.

Citation.

Henry B. Wesselman, attorneys, 55 Liberty Street, New York.

Due service of a copy of the within is this day admitted.

New York, ———, 19——.

To ———, Attorney.

United States Circuit Court of Appeals, Second Circuit. Filed
Apr. 6, 1917. William Parkin, Clerk.

Endorsed on cover: File No. 25,900. U. S. Circuit Court of Appeals, 2d Circuit. Term No. 477. The Harriman National Bank of New York, plaintiff in error, vs. Harry H. Seldomridge, as receiver of the Mercantile National Bank of Pueblo, Colorado. Filed April 11th, 1917. File No. 25,900.

JAN 13 1919

JAMES D. MAHER,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.No. 173.

THE HARRIMAN NATIONAL BANK OF NEW YORK,
Plaintiff-in-Error,

vs.

HARRY H. SELDOMRIDGE, AS RECEIVER OF THE
MERCANTILE NATIONAL BANK OF PUEBLO,
COLORADO,

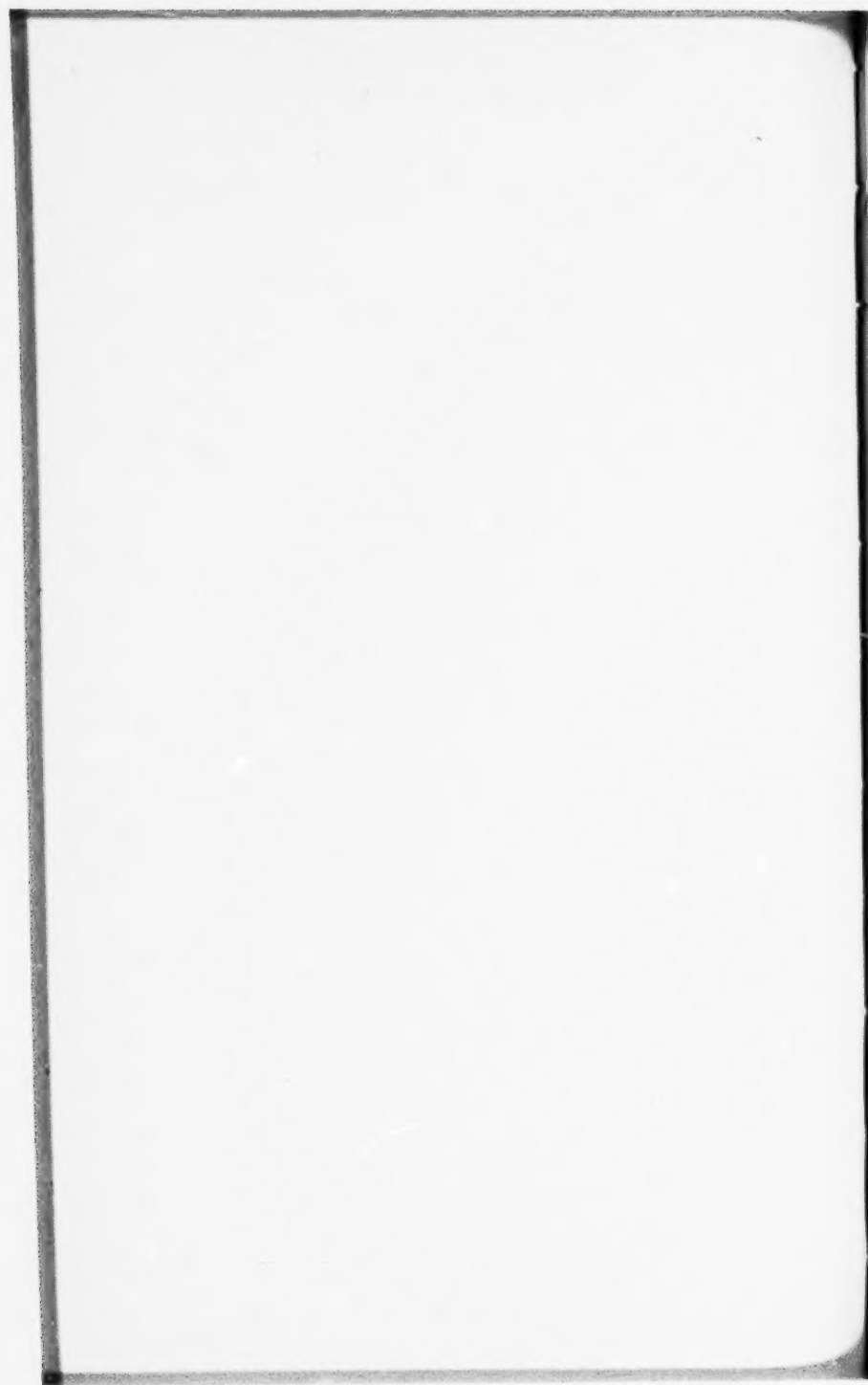
Defendant-in-Error.

In Error to the United States Circuit Court of Appeals for
the Second Circuit.

BRIEF FOR PLAINTIFF-IN-ERROR.

WESSELMAN & KRAUS,
Solicitors for Plaintiff-in-Error.

CHARLES E. HUGHES,
BERTRAM L. KRAUS,
Of Counsel.



SUBJECT INDEX.

| | PAGES |
|-------------------------|-------|
| STATEMENT OF CASE..... | 1 |
| STATEMENT OF FACTS..... | 3 |
| POINTS | 16 |
| ARGUMENT | 17 |

POINTS.

FIRST: The credit extended by the Harriman National Bank was obtained by fraud, the collateral security being forged, and hence the Harriman National Bank was entitled to rescind the credit..... 17-19

SECOND: On the transfer of the credit to the Mercantile National Bank, the latter took subject to all equities. The Mercantile National Bank had no standing superior to that of the Slaughters 20-37

THIRD: If notice could be deemed important, the Mercantile National Bank could not take the benefit of the transfer obtained through the act of C. C. Slaughter without taking the burden of the knowledge which he had 37-46

FOURTH: The Receiver of the Mercantile National Bank stands in no better position than that in which the Bank itself stood.. 46-47

CASES.

| | PAGES |
|--|-------|
| Aldrich <i>v.</i> Chemical National Bank, 176 U. S. 618..... | 40 |
| American National Bank <i>v.</i> Miller, 185 Fed. 338, 229 U. S. 517..... | 37 |
| Armstrong <i>v.</i> Trautman, 36 Fed. 275..... | 3 |
| Auten <i>v.</i> United States National Bank, 174 U. S. 125..... | 3 |
| Bates <i>v.</i> Dresser, 229 Fed. 772..... | 3 |
| Bradley <i>v.</i> Seaboard National Bank, 167 N. Y. 427..... | 19 |
| Cherry <i>v.</i> City National Bank, 144 Fed. 587 | 24 |
| Curry <i>v.</i> Wisconsin National Bank, 149 Wis. 413 | 23 |
| Distilled Spirits, The, 11 Wall. 356..... | 39 |
| Ditty <i>v.</i> Dominion National Bank, 75 Fed. 769 | 40 |
| First National Bank, Etc., <i>v.</i> Whitman, 94 U. S. 343..... | 23 |
| Flatow <i>v.</i> Jefferson Bank, 135 App. Div. (N. Y.) 24..... | 19 |
| Greenhalgh Co. <i>v.</i> Farmers National Bank, 226 Pa. 184..... | 23 |
| Holden <i>v.</i> New York and Erie Bank, 72 N. Y. 286..... | 42 |
| In re Chetwood, 165 U. S. 443..... | 3 |
| International Trust Co. <i>v.</i> Weeks, 203 U. S. 364 | 3 |

| | PAGES |
|---|------------|
| Kendrick State Bank <i>v.</i> First National Bank of Portland, 213 Fed. 610..... | 24 |
| Lockwood <i>v.</i> Thorne, 18 N. Y. 285..... | 23 |
| Mann <i>v.</i> Franklin Trust Co., 158 App. Div. (N. Y.) 491..... | 19 |
| Modern Woodman of America <i>v.</i> Union National Bank, 108 Fed. 753..... | 24, 25 |
| National Bank <i>v.</i> Burkhardt, 100 U. S. 686.. | 37 |
| Price <i>v.</i> Abbott, 17 Fed. 506..... | 3 |
| Rankin <i>v.</i> City National Bank, 208 U. S. 541 | 24, 25, 47 |
| Selover <i>v.</i> First National Bank, 77 Minn. 140 | 34 |
| Shipman <i>v.</i> Bank of the State of New York, 126 N. Y. 318..... | 23 |
| Sonnentheil <i>v.</i> Moerlein Brewing Co., 172 U. S. 401..... | 3 |
| Talcott <i>v.</i> First National Bank, 53 Kans. 480, 30 Pac. 1066..... | 23, 25 |
| The Distilled Spirits, 11 Wall. 356..... | 39 |



Supreme Court of the United States,

OCTOBER TERM, 1918,

No. 173.

THE HARRIMAN NATIONAL BANK OF NEW YORK,
Plaintiff-in-error,

vs.

HARRY H. SELDOMRIDGE, as Receiver of the Mercantile National Bank of Pueblo, Colorado,
Defendant-in-error.

In error to the United States Circuit Court of Appeals for the Second Circuit.

BRIEF FOR PLAINTIFF-IN-ERROR.

Statement of the Case.

This is a writ of error to review the final judgment of the United States Circuit Court of Appeals for the Second Circuit, affirming the judgment of the District Court (*Transcript*, pp. 158, 183; 240 Fed. 111).

The action was brought by the defendant-in-error, Harry H. Seldomridge, as Receiver of the Mercantile National Bank of Pueblo, Colorado, to recover the sum of \$30,000 alleged to have been deposited with the Harriman National Bank of New York, the plaintiff-in-error, to the credit of the Mercantile National Bank of Pueblo (*id.* p. 2). The defense was, in substance, that the amount in question had been loaned by the Harriman National Bank to one W. B. Slaughter, (the President of the Mercantile National Bank of Pueblo and the owner of the controlling interest therein); that this loan had been obtained by fraud and upon forged collateral; that the transfer of the credit thus obtained to the Mercantile National Bank was without consideration and in fraud of the rights of the Harriman National Bank and gave the Mercantile National Bank no superior right; that the Harriman National Bank was entitled to rescind and did rescind the credit and that there was nothing due from the Harriman National Bank to the Mercantile National Bank of Pueblo or to the defendant-in-error as its Receiver (*id.* pp. 3-9).

The action was tried before District Judge Grubb and a jury (*id.* p. 37). At the close of the case the Court directed a verdict for the plaintiff for the amount of the claim (*id.* p. 96); and the judgment thereupon entered was affirmed by the Circuit Court of Appeals (*id.* p. 158).

As the action was brought by a Receiver of a National Bank, the jurisdiction of the District Court did not depend entirely upon diversity of citizenship, but rested upon the fact that the suit arose under the laws of the United States.

(Judicial Code, Sec. 24.) The receiver of a national bank is not a mere officer of the Court, but is an agent and officer of the United States. Neither the Act of July 12, 1882, c. 290 (22 Stat. 162), nor that of March 3, 1887, c. 373 (24 Stat. 552), relating to suits by and against national banks, ousted the Federal Courts of their jurisdiction to entertain suits by or against receivers of national banks, irrespective of the citizenship of the parties, and the same rule governs under the Judicial Code.

Price v. Abbott (Gray, J.), 17 Fed. 506;
Armstrong v. Trautman (Jackson, J.),
 36 Fed. 275;

In re Chetwood, 165 U. S. 443, 458;
Auten v. United States National Bank,
 174 U. S. 125, 141;

International Trust Co. v. Weeks, 203
 U. S. 364, 366;

Bates v. Dresser, 229 Fed. 772, 773.

Accordingly, the judgment of the Circuit Court of Appeals was not final (Judicial Code, Sec. 128) and the writ of error was properly issued for a review of the judgment by this Court.

Auten v. United States National Bank,
supra.

See, also,

Sonnentheil v. Moerlein Brewing Co.,
 172 U. S. 401, 405.

Statement of Facts.

The District Judge, in directing a verdict for the plaintiff (the defendant-in-error) proceeded

upon the view that there was no disputed question of fact (*Transcript*, p. 92). The same view was entertained by the Circuit Court of Appeals (*id.* p. 158). The question of law thus presented by the evidence was, we contend, erroneously decided. Upon the undisputed facts, it is submitted that the plaintiff is not entitled to recover. In this discussion, for convenience, we shall refer to the defendant-in-error (the plaintiff below), as the Receiver, and to the plaintiff-in-error (the defendant below) as the Harriman National Bank of New York.

The following facts we believe to be beyond controversy:

The Mercantile National Bank of Pueblo suspended business on March 29, 1915, and its affairs were then taken in charge by the Comptroller of the Currency (*id.* p. 101). The transactions involved in this suit took place during the two months preceding that date.

One W. B. Slaughter owned the controlling interest in, and was President of, the Mercantile National Bank of Pueblo, and his son, C. C. Slaughter, was its cashier, and had charge of the bank (*id.* p. 59). W. B. Slaughter was also interested in the cattle business in Texas (*id.*)

W. B. Slaughter also owned the controlling interest in, and was President of, the Silverton National Bank of Silverton, Colorado (*id.* p. 143). There was another bank at Silverton called the First National Bank, which was controlled by one M. D. Thatcher (*id.*).

Under date of January 28, 1915, the Harriman National Bank of New York received a letter purporting to be signed by W. B. Slaughter, which, in fact, was dictated by C. C. Slaughter and signed by

a rubber stamp without the knowledge of W. B. Slaughter (*id.* pp. 58, 44). This letter in substance requested a loan of \$30,000, offering as security 500 shares of the Mercantile National Bank of Pueblo and 400 shares of the First National Bank of Silverton the purchase of which was said to be in contemplation. The letter stated (Ex. F, *id.* p. 143) :

"I believe you are aware that I am President of the Silverton National Bank at Silverton, Colorado * * *.

"There are only two banks there, the First National, which is owned and controlled by Mr. M. B. Thatcher and the Silverton National, and I believe it is to our mutual advantage to either buy or sell and consolidate the two, thereby making a very satisfactory bank * * *. Hence, I either expect to buy the First National Bank or sell my interests to Mr. Thatcher and in order to buy I would require for about 60 days \$25,000.00 or \$30,000.00. In other words I would need this until I could get my money on the consolidation out of the First National Bank, but under no circumstances would I need the loan for over sixty days, that is, to April 1st * * *.

"As security I would offer 500 shares of the Mercantile National Bank which is worth at book value \$1.35 and 400 shares of the First National Bank, for if I purchase I will purchase the entire holdings and the bank will be known as the First National. I believe this will be ample security.

"I will be very glad if you will telegraph me your decision so it will reach me by Monday. As stated I will execute a note payable 60 days after date and will have my son C. C. Slaughter sign with me, if you deem necessary. All I can offer in way of my appreciation of my loan would be to give you the New York account of the First National Bank."

On February 1, 1915, the Harriman National Bank telegraphed W. B. Slaughter as follows (Ex. G, *id.* p. 144) :

“Letter received. Will accommodate you to extent thirty thousand dollars for sixty days upon security and joint note yourself and C. C. Slaughter when you need it. Letter follows.”

On the same day, the Harriman National Bank confirmed this telegram by a letter to the same effect (Ex. H, *id.* p. 144). The letter stated that the loan was to be upon “500 shares of the Mercantile National Bank stock and 400 shares of the First National Bank of Silverton upon the joint note of yourself” (W. B. Slaughter) “and Mr. C. C. Slaughter” (*id.* p. 144).

The loan, to which this correspondence relates, was not made until February 11, 1915, when, as we shall presently show, it was fraudulently procured by the use of forged collateral. In the meantime, and *before any loan had been made by the Harriman National Bank*, the controlling interest in the stock of the First National Bank of Silverton was purchased by C. C. Slaughter, acting ostensibly for his father, W. B. Slaughter (*id.* pp. 49, 50). This transaction was consummated on February 6, 1915, when C. C. Slaughter, purporting to act for his father, purchased all of Mr. Thatcher's stock in the First National Bank of Silverton for \$70,000 and gave in partial payment therefor a check for \$35,000 drawn on the Mercantile National Bank of Pueblo and signed “W. B. Slaughter by C. C. Slaughter.” This check was paid by the Mercantile National Bank on February 8, 1915 (*id.* pp. 48, 121).

On February 8, 1915, C. C. Slaughter made out a deposit slip to the Mercantile National Bank, indicating a deposit by W. B. Slaughter of a check drawn on the Harriman National Bank in the sum of \$30,000 (*id.* p. 48; Ex. P, *id.* p. 150). In fact, there was no such check. At that time, no loan had yet been made by the Harriman National Bank, and there were no proceeds of any loan by that bank available in any form for deposit.

It takes about three days for mail to reach New York from Pueblo (*id.* p. 48), and it was not until February 7, 1915, that the pretended note and securities were mailed from Pueblo to the Harriman National Bank (*id.*). On February 7, 1915, a letter, dictated by C. C. Slaughter and purporting to be signed by W. B. Slaughter (Ex. I, *id.* p. 145), was mailed to Joseph W. Harriman, the President of the Harriman National Bank, which, after acknowledging the receipt of the telegram of February 1, 1915, said:

“and in accordance with your telegram and also letter of late date, I am herewith handing you the note dated February 10th, properly signed by myself and C. C. Slaughter, and also enclose five hundred shares of the capital stock of the Mercantile National Bank and also four hundred shares of the First National Bank of Silverton, Colorado.

“Will ask you to kindly place the proceeds of this note to my credit. If for any reason this note is not satisfactory, kindly wire, as I am drawing on the funds on Monday. It will possibly be twenty or thirty days before I will be able to give you the First National Bank's account for the reason I will not get up there to make the necessary arrangements. * * *”

There was enclosed in this letter what purported to be the joint note of W. B. Slaughter and C. C. Slaughter to the order of Harriman National Bank of New York for \$30,000 (Ex. K, *id.* pp. 146-147) and as collateral security therefor what purported to be two certificates (of 250 shares each) of the capital stock of the Mercantile National Bank and one certificate for 400 shares of the capital stock of the First National Bank of Silverton and each certificate purported to be endorsed by W. B. Slaughter for transfer (Exs. L, M, N; *id.* pp. 147-149).

Neither the letter of February 7, 1915, nor the above-mentioned note were signed by W. B. Slaughter (*id.* fols. 104-107; pp. 56-58). The signatures purporting to be that of W. B. Slaughter were written by one W. T. Wheatley (*id.* p. 53), who had become proficient in imitating the signature of W. B. Slaughter, and were forgeries.

The signatures, W. B. Slaughter, on the powers of attorney for the transfer of the certificates of stock of the Mercantile National Bank of Pueblo and of the First National Bank of Silverton were also forgeries (*id.* pp. 57-58). The certificate itself for the 400 shares of the stock of the First National Bank of Silverton, which were enclosed in the letter of February 7, 1915, to the Harriman National Bank was a forgery. At the time this letter of February 7, 1915, was sent to the Harriman National Bank no certificates of the stock of the First National Bank of Silverton had been delivered on the purchase from Thatcher. The genuine certificate on this purchase bears date February 10, 1915 (*id.* fol. 94; p. 50; Ex. Q, fol. 263, p. 150). The spurious certificates were obtained and signed in the following manner:

On February 5, 1915, C. C. Slaughter obtained from a printer named O'Brien seven blank certificates and at the same time purchased from a manufacturer named Franz a seal which he said was for the First National Bank of Silverton (*id.* pp. 51, 52). One of the certificates thus obtained purported to represent 400 shares of the stock of the First National Bank of Silverton and was sent to the Harriman National Bank bearing an impression from the seal purchased from Franz. This spurious certificate was dated February 4, 1915 (Ex. N, *id.* p. 149), and on that date W. B. Slaughter was not the owner of any stock of the First National Bank of Silverton (*id.* fols. 94, 95, p. 51). The names "Jno. Werkheiser, *Cashier*" and "W. B. Slaughter, *President*" (of the First National Bank of Silverton) written on this certificate were forgeries (*id.* fols. 94, 105, pp. 51, 57). W. B. Slaughter was not the President of that Bank at that time (*id.* fols. 93, 104, pp. 50, 56). The signature of W. B. Slaughter, President, on the spurious certificate of stock of the First National Bank of Silverton was written by Wheatley at the direction of C. C. Slaughter (*id.* fol. 100, p. 54).

The letter of February 7th was received by the Harriman National Bank and was acknowledged by letters of February 10, 1915, addressed to W. B. Slaughter and C. C. Slaughter respectively (Exs. 10, 11, *id.* pp. 100, 101), and thereupon the Harriman National Bank placed the sum of \$30,000 to the credit of the personal account of W. B. Slaughter. This credit was actually given on February 11, 1915 (*id.* fol. 72, p. 38).

The Harriman National Bank believed the note and collateral securities to be genuine and made

the loan, that is, gave the credit, upon the faith of their genuineness. It is conceded that the Bank would not otherwise have loaned the money (*id.* fol. 81, p. 43).

The Mercantile National Bank of Pueblo was a depositor of the Harriman National Bank. On February 17, 1915, the account of the Mercantile National Bank was overdrawn to the extent of about \$8,000 and thereupon the Harriman National Bank telegraphed the Mercantile National Bank as follows (Ex. 3, *id.* p. 97):

“Checks presented your account appears to be overdrawn \$8,000.00. Have you remitted to cover overdraft. Slaughter’s personal balance is 30,000. Did you intend loan proceeds for credit bank wire.”

On the same date (February 17, 1915), the following telegram in the name of the Mercantile National Bank was sent to the Harriman National Bank (Ex. A, *id.* p. 141):

“Place thirty thousand personal account W. B. Slaughter our credit.”

This telegram was dictated by C. C. Slaughter (*id.* fol. 84, p. 45).

On receipt of the last-mentioned telegram, on February 18, 1915, the Harriman National Bank charged the account of W. B. Slaughter with \$30,000 and placed the same amount to the credit of the Mercantile National Bank (*id.* fols. 73, 74, p. 39). On the same day the Harriman National Bank sent to W. B. Slaughter a letter which was in part as follows (Ex. B, *id.* p. 141):

“We have this day received a telegram as follows: ‘Place thirty thousand personal account W. B. Slaughter our credit’. In accord-

ance with instructions therewith, we have charged your account \$30,000 and place this amount to the credit of the Mercantile National Bank of Pueblo, Colo. Kindly confirm our action in this matter."

No reply to this telegram or confirmation of it was ever received from W. B. Slaughter (*id.* fol. 73, p. 39).

The Harriman National Bank received a letter, under date of February 22, 1915, addressed to its Vice-President, which was written on the letter-head of the Mercantile National Bank and signed "C. C. Slaughter, *Cashier*", and was as follows (Ex. 4, *id.* p. 98):

"I have your favor of the 18th in reference to the \$30,000.00 placed to the credit of W. B. Slaughter and desire to state this is to confirm our telegram to you of late date, requesting this money be placed to the credit of the Mercantile National Bank for the use of W. B. Slaughter, and we are crediting like amount, as we understood this was our original instructions to you, but upon investigation find that such was not the case.

"This letter will also be your authority to charge the Mercantile National Bank's account \$6.00 to cover revenue stamps which you placed on the note.

"Thanking you very kindly and regretting you were caused any annoyance on account of improper instructions, I remain,

"Yours very truly,
C. C. SLAUGHTER, *Cashier*."

In reply to this letter, the Harriman National Bank wrote C. C. Slaughter, *Cashier*, under date of February 25, 1915, as follows (Ex. 5, *id.* p. 98):

"In accordance with your instructions of February 22nd, we beg to advise you that we

have charged your account \$6.00 in payment of Revenue Stamps on loan for \$30,000 made to yourself and W. B. Slaughter on February 10, 1915."

The above-mentioned loan to W. B. Slaughter by the Harriman National Bank, and the transfer of credit of \$30,000 from the account of W. B. Slaughter to that of the Mercantile National Bank, were purely credit transactions and consisted wholly of entries on the books of the Harriman National Bank. The \$30,000 in question was never paid by the Harriman National Bank, either to W. B. Slaughter or to the Mercantile National Bank (*id.* fols. 73, 74, p. 39). And after the cancellation of this credit of \$30,000 to the Mercantile National Bank, as stated below, there still remained on deposit with the Harriman National Bank to the credit of the Mercantile National Bank about \$23,000 (*id.* p. 39; Ex. 50, p. 138). In short, no situation ever arose which precluded the Harriman National Bank from asserting its right to rescind the credit which had been induced by fraud and the delivery of forged collateral. There was never any actual passing of this amount of \$30,000 from the Harriman National Bank to the Mercantile National Bank or to anyone else.

On March 23, 1915, a telegram signed "W. B. Slaughter, *President Mercantile National Bank*", was received by the Harriman National Bank, as follows (Ex. 9, *id.* p. 100):

"Cancel authority C. C. Slaughter as an officer of this bank as of date today resigned."

On March 25, 1915, the Harriman National Bank received the following telegram from W. D. Grisard, Assistant Cashier of the Mercantile National Bank (Ex. 12, *id.* p. 101):

“Mail statement of our account at close of your business March 25th; also statement of all obligations of this bank with your bank. All guaranties of this bank, its officers or directors covering transactions subsequent to this date are hereby cancelled and revoked.”

On March 26, 1915, the Harriman National Bank telegraphed W. B. Slaughter, President, Mercantile National Bank, Pueblo, as follows (Ex. D, *id.* p. 142):

“We credited your personal account \$30,000 February 10th proceeds of loan. Under instructions from C. C. Slaughter February 18th, we charged your personal account and credited account Mercantile National Bank with this \$30,000. Inasmuch as we have not received confirmation and instructions from you personally as requested we have this day charged Mercantile National Bank \$30,000 and hold the amount out of their account and in our Sundry Account subject to adjustment of which please take note. Balance Mercantile National Bank after this deduction is \$23,000 odd.”

On the same day, the Harriman National Bank confirmed the telegram by letter, which, after setting forth the telegram, said (Ex. E, *id.* p. 142):

“Inasmuch as there is some misunderstanding with regard to this loan, we have taken the above said action. We should like very much to hear from you as to your telegram of the 23rd, cancelling authority of C. C. Slaughter, and as to your telegram of the 25th, advising that all guaranties of your bank, its officers and directors, covering transactions subsequent to that date are cancelled and revoked. Your telegram is signed by W. G. Grisard, Ass't Cashier, and also by Robert Grant. We are certainly at a loss to under-

stand these telegrams and should like a full explanation from you in writing."

The account of the Mercantile National Bank was charged by the Harriman National Bank, on March 26, 1915, with the sum of \$30,000, and this amount was thereupon placed in the sundry account of the Harriman National Bank, as stated in its telegram (*id.* fols. 74, 88, pp. 39, 47). This still left to the credit of the Mercantile National Bank \$22,961.37, on March 27, 1915 (Ex. 50, *id.* p. 138).

On March 29, 1915, a telegram was sent to the Harriman National Bank signed by George W. Goodelle, Examiner in Charge, stating that the Mercantile National Bank had suspended business and that its affairs were in the hands of the Comptroller of the Currency (Ex. 13, *id.* p. 101).

On March 30, 1915, the Harriman National Bank charged the amount of the note against the account in which the \$30,000 was held, thereby cancelling the loan. And on the same date the Harriman National Bank wrote to W. B. Slaughter to this effect and stating that the collateral was held subject to his order. The letter is as follows (Ex. 38, *id.* p. 121):

"Referring to the loan we made to you personally February 10th last, we have to advise you that the collateral thereto, on account of the failure of the Mercantile National Bank of Pueblo, is now of doubtful value.

"Will you kindly, therefore, be advised that, in accordance with the terms of the collateral note on which the \$30,000.00 was loaned to you, the note is now due and payable, and the amount thereof, which we have been holding in our sundry account, as we advised you March 26th, has this day been charged against

the same account, cancelling the indebtedness. We hold the collateral thereto, being Certificates Nos. 3 and 4 for 250 shares each of the stock of the Mercantile National Bank of Pueblo, and Certificate No. 109 for 400 shares of the First National Bank of Silverton, Colorado, subject to your order. The signature of C. C. Slaughter under your name on the note we consider, in accordance with your advices, to be an accommodation endorsement. If you desire to borrow on collateral other than the securities we now hold, we shall be glad to accommodate you.

"Kindly send us your check for \$240.00, being the interest due up to this date on the above said note."

No letter, telegram or advice of any kind was received by the Harriman National Bank from W. B. Slaughter prior to April, 1915 (*id.* fol. 73, p. 39).

On June 25, 1915, W. B. Slaughter wrote to the Harriman National Bank as follows (Ex. C, *id.* p. 141):

"Your letter of June 19th, which was mailed to me at Pueblo and forwarded to Dallas, has been received, and contents noted.

"I received notice of this note in April at Pueblo, and advised you at the time that I never signed a note for \$30,000.00 to you, and if you have my name to a \$30,000.00 note it's forgery and I never authorized anyone else to this effect.

"This is the second notice I have sent you in regard to the matter. I know nothing about the note in question."

The statement that the note and collateral were forged was found to be correct.

The balance of \$22,961.37, to the credit of the Mercantile National Bank with the Harriman Na-

tional Bank on March 27, 1915 (after the \$30,000 in question had been taken out of the account) with other moneys subsequently received, was subsequently paid over to the Receiver of the Mercantile National Bank. The account was thus finally closed on April 5, 1915, by a remittance of \$36,034.86 by the Harriman National Bank to the Receiver of the Mercantile National Bank (*id.* fol. 74, p. 39).

In June, 1915, the Receiver demanded payment of the sum of \$30,000 as due from the Harriman National Bank to the Mercantile National Bank (Ex. 7, p. 99) and the demand having been refused, this suit was brought by the Receiver to recover the amount.

POINTS.

We present the following points:

(1) The credit extended by the Harriman National Bank was obtained by fraud, the collateral security being forged, and hence the Harriman National Bank was entitled to rescind the credit.

(2) On the transfer of the credit to the Mercantile National Bank, the latter took subject to all equities. The Mercantile National Bank had no standing superior to that of the Slaughters.

(3) If notice could be deemed important, the Mercantile National Bank could not take the benefit of the transfer obtained through the act of C. C. Slaughter without taking the burden of the knowledge which he had.

(4) The Receiver of the Mercantile National Bank stands in no better position than that in which the Bank itself stood.

ARGUMENT.

FIRST: The credit extended by the Harriman National Bank was obtained by fraud, the collateral security being forged, and hence the Harriman National Bank was entitled to rescind the credit.

There is no room for controversy that the loan made by the Harriman National Bank on February 10th or 11th, 1915, which was evidenced by the credit extended in the personal account of W. B. Slaughter, was induced by fraud upon the delivery of forged securities.

The offer of the Bank to make the loan, in pursuance of the request coming ostensibly from W. B. Slaughter, was a conditional offer. The letter of January 28, 1915, stated that the collateral security for the requested loan would be 500 shares of the stock of the Mercantile National Bank and 400 shares of the First National Bank of Silverton, and the offer of the Harriman National Bank in response to this letter stated that the loan would be made upon this security (Exs. F, G, H; *Transcript*, pp. 143, 144).

There was no loan, or credit resulting therefrom, until February 10, 1915, when the note was received, dated on that day, reciting the collateral security described in the offer, certificates for

which purported to be attached to the note (Exs. K, L, M, N, *id.* pp. 146-149).

The evidence clearly shows that the note itself and the powers of attorney for transfer of the certificates of stock, purporting to be signed by W. B. Slaughter, were forged, as W. B. Slaughter had not authorized his signature thereto. But, apart from this, there is not the slightest question that the certificate for 400 shares of the First National Bank of Silverton, delivered as collateral security, was a forged certificate and this fact is abundantly sufficient for the purposes of this case.

Upon this point the District Judge found as follows (*id.* p. 92):

“There was a fictitious certificate of stock and W. B. Slaughter’s name was forged to the note and transfer, so as between the Harriman National Bank and Slaughter there is no doubt in my mind but what it was a fraud and the Bank would have a right as long as it held the money to hold it as against Slaughter.”

The Circuit Court of Appeals also found (*id.* p. 157):

“It is further urged by defendant that there was fraud in the negotiation of the loan by defendant to the Slaughters. This is true, as C. C. Slaughter deliberately forged a portion of the collateral attached to the note discounted by the Harriman Bank.”

We therefore find no occasion to discuss the evidence, which conclusively supports these findings, as we shall assume that such discussion is unnecessary.

When the Harriman National Bank received the note and collateral securities, believing them

to be genuine, it made the loan by placing to the credit of W. B. Slaughter the sum of \$30,000. Although it would make no difference in the result, it may be observed that the note was not discounted but a credit was simply opened on the books of the Bank in favor of W. B. Slaughter (*id.* fols. 72, 73, pp. 38, 39). This credit was nothing more than a promise by the Bank, and it was a promise induced by the forged collateral. The credit remained in this shape until February 18, 1915 (*id.* Ex. 3, p. 97, Exs. A, B., *id.* p. 141), when it was transferred to the Mercantile National Bank.

In view of the forgery committed, it requires no discussion of authorities to establish that the Mercantile National Bank was entitled to rescind the credit as against the Slaughters. In view of the forged collateral it makes no difference whether W. B. Slaughter authorized his signature and thus became a party to the note or not. If he was a party, he was a party to the fraud. If he was not a party to the note, then the transaction was induced solely by C. C. Slaughter who perpetrated the fraud. But it was none the less perpetrated, and the Bank was entitled to rescind the credit thus obtained.

See,

Bradley v. Seaboard National Bank, 167 N. Y. 427.

Flatow v. Jefferson Bank, 135 App. Div. (N. Y.) 24.

Mann v. Franklin Trust Co., 158 App. Div. (N. Y.) 491.

SECOND: On the transfer of the credit to the Mercantile National Bank, the latter took subject to all equities. The Mercantile National Bank had no standing superior to that of the Slaughters.

(1) *There is no negotiable paper involved.* The only negotiable instrument, in the whole transaction, was the note made by the Slaughters to the Harriman National Bank. That Bank had simply made a promise to lend an amount of money, and this promise the Bank was entitled to rescind, as it had been induced by fraud. W. B. Slaughter did not draw any check against the credit which was opened in his favor (*id.* pp. 38, 39).

At the request of the Mercantile National Bank on February 17, 1915 (Ex. A, *id.* p. 141), confirmed by letter signed "C. C. Slaughter, Cashier", dated February 22, 1915 (Ex. 4, *id.* p. 98), the credit was transferred from the personal account of W. B. Slaughter to the account of the Mercantile National Bank. There is no basis for any dispute about this fact; the Cashier of the Harriman National Bank testified (*id.* pp. 38, 39):

"After I received the telegram marked Defendant's Exhibit A I transferred the \$30,000 from the personal account of W. B. Slaughter to the Mercantile National Bank of Pueblo, and then on the same date I wrote this letter". (Referring to Exhibit B, *id.* p. 141.)

This transfer was not in payment of any check. It was not a payment at all. It was nothing but a book entry of credit in favor of the Mercantile National Bank, as a transfer of the credit pre-

viously entered in favor of W. B. Slaughter (*id.* fol. 74, p. 39).

If the transfer was unauthorized by W. B. Slaughter, there was no transfer at all and the transaction was abortive. If it was authorized by W. B. Slaughter, it was still simply a transfer of whatever right he had to receive this amount of money from the Harriman National Bank by virtue of the loan which had been induced by the delivery of his note and collateral security. There was no negotiable paper used in the transfer and the principle of negotiability was in no way involved. *It was at most a simple transfer of a chose in action.*

(2) *There was no agreement whatever with the Mercantile National Bank which gave it standing to enforce payment of the amount in question.*

It goes without saying that if the Mercantile National Bank could be deemed to be a party to the original transaction, it would not have been in a position to gain anything thereby, for the promise of the Harriman National Bank was conditioned upon the receipt of genuine collateral security, and this was not furnished. If, instead of a request for a loan in the name of W. B. Slaughter, there had been a request by C. C. Slaughter, as cashier, on behalf of the Mercantile National Bank, the latter would have fared no better. And if the credit had at once been entered on the books of the Harriman National Bank in favor of the Mercantile National Bank, it would have been open to rescission, as the collateral furnished was not the collateral promised, but was spurious.

The same result would be reached if it could be said that in some way the Harriman National

Bank had agreed with the Mercantile National Bank that it would make the loan to W. B. Slaughter. For, even on such a hypothesis (which is contradicted by the undisputed proof) the loan would still have been made upon condition that genuine collateral security was furnished, and the loan, and corresponding credit, would be equally open to rescission.

Similarly, the suggestion of an account stated between the Harriman National Bank and the Mercantile National Bank is wholly unavailing.

There is no basis for the suggestion of an account stated, save the mere fact that the sum of \$30,000 was entered in the account of the Mercantile National Bank when the credit was transferred from the personal account of W. B. Slaughter, on February 18, 1915 (Ex. B, *id.* p. 141). In other words, we have nothing but the book entry of the credit, the transcript of account being of course a transcript of the entry. Neither the book entry itself, nor the transcript of account which showed the entry transferring the credit (Ex. 49, pp. 133, 134), added anything to the rights of the Mercantile National Bank. It was still simply the transferee of a *chose in action* which had the infirmity of having been created through fraud upon the delivery of forged collateral.

It is elementary that an account stated may be opened on proof of fraud or mistake, and it would be a monstrous thing to say that when the Harriman National Bank, believing the collateral to be genuine, transferred the credit to the Mercantile National Bank upon its request the Harriman National Bank thereby became irrevocably bound, notwithstanding the fraud committed upon it, simply because it had made an entry in its books

or a corresponding entry in the transcript of its books sent to the Mercantile National Bank.

In the leading case of *Lockwood v. Thorne*, 18 N. Y., 285, 292, it is said:

"An account *stated* or *settled*, is a mere admission that the account is correct. It is not an estoppel. The account is still open to impeachment for mistakes or errors. * * *

"* * * But the parties are never precluded from giving evidence to impeach the account, unless the case is brought within the principles of an *estoppel in pais* or of an obligatory agreement between the parties; as, for instance, where, upon a settlement, mutual promises are made."

So, a balance struck in a depositor's pass-book can always be impeached for fraud or mistake.

Greenhalgh Co. v. Farmers National Bank, 226 Pa. 184.

Shipman v. Bank of the State of New York, 126 N. Y., 318, 327.

Talcott v. First National Bank, 53 Kans. 480, 36 Pac. 1066.

Curry v. Wisconsin National Bank, 149 Wis. 413.

"When discovered, the mistake must be rectified, and an ordinary writing up of a bank book, with a return of vouchers or a statement of accounts, precludes no one from ascertaining the truth and claiming its benefits."

First National Bank, Etc., v. Whitman, 94 U. S. 343, 346.

The truth is that there was no agreement whatever between the Harriman National Bank and the Mercantile National Bank relating to the mat-

ter. Nor was there any consideration for any such agreement. Even the payment by the Mercantile National Bank of W. B. Slaughter's check on the Mercantile National Bank for the stock of the First National Bank of Silverton, which he purchased from Thatcher, *had been made ten days before the transfer of the credit with the Harriman National Bank was requested*. That is, this payment by the Mercantile National Bank of \$35,000 took place on February 8, 1915 (*id.* fol. 90, p. 48, fol. 217, p. 121), and the first suggestion of a transfer to the Mercantile National Bank of the credit extended on the books of the Harriman National Bank to W. B. Slaughter was on February 17, 1915, and the transfer of the credit was made on February 18, 1915 (Exs. A, B, *id.* p. 141).

Aside from the direction to transfer the credit, the Harriman National Bank had no transactions relating to the matter with the Mercantile National Bank. And as this transfer was at the most a transfer of a *chose in action*, it was subject to all equities, and the mere entry upon the books of the bank or the mere furnishing of a transcript of account showing the entry did not create an obligation which precluded the Harriman National Bank from showing that it had been deceived by the delivery of forged collateral and was entitled to rescind.

Mere book entries do not create an obligation.

Rankin v. City National Bank, 208 U. S. 541, 545, 546, affirming *Cherry v. City National Bank*, 144 Fed. 587.

Kendrick State Bank v. First National Bank of Portland, 213 Fed. 610.

Modern Woodmen of America v. Union National Bank, 108 Fed. 753.

In the case of *Rankin v. City National Bank*, *supra*, the attempt, at the suit of a receiver of a national bank, to give efficacy to book entries importing a deposit, regardless of the true facts of the case, failed. The Court went beneath the book entries and found that there was no real liability for the deposit, defeating the claim.

In *Modern Woodmen of America v. Union National Bank*, *supra*, the cashier of the bank, in answer to a request for a certificate showing balance in his bank on a certain date in favor of the bank making the request, certified that upon that day the plaintiff had on deposit in the bank a certain sum of money. The defendant was permitted to explain that fact and to show the true transaction. Circuit Judge Thayer, in delivering the opinion of the Circuit Court of Appeals, said (p. 759):

“Nor do we perceive that the defendant Bank, on the facts above detailed, should be held estopped from showing the circumstances under which the certificate in question was issued, or from showing that in point of fact the Modern Woodmen of America had no funds whatsoever on deposit with it on December 31, 1895 * * *. A very different result would probably be reached if the certificate had been a negotiable instrument, and had passed into the hands of an innocent purchaser for value; but we are not called upon to consider such a case.”

The true rule is thus stated in *Talcott v. First National Bank*, 53 Kans. 480, 36 Pac. 1066:

“The authorities are that the entry in a pass-book, ‘by the proper officer, of the amount and date of the deposit, is *prima facie* evidence that the bank received the amount,

and binds the bank like any other form of receipt. But the entry is only a receipt, and is open to explanation by evidence *aliunde*, and, if shown to be mistaken, is no longer binding upon the bank. The receipt is also open to correction in favor of the depositor, if it be erroneous.' 2 Am. & Eng. Enc. Law, pp. 102, 103, and cases cited; Morse on Banks, in volume 1 (3d Ed.), Sec. 290, says: 'A bank-book is *prima facie* evidence, but no more, and is open to explanation by parol evidence, for it is not a contract.' "

(3) *Nor can it be said that the Harriman National Bank is estopped from showing the fraud and denying liability for the amount in question.*

The only payment which was made by the Mercantile National Bank, on the check of W. B. Slaughter, which was given by or for him on the purchase of the stock of the First National Bank of Silverton, was a payment made on February 8, 1915. This check on the Mercantile National Bank was dated February 6, 1915, and was made to the order of M. B. Thatcher for \$35,000 (Ex. 37 *id.* p. 121).

At the time this check was paid by the Mercantile National Bank, the loan in question had not been made by the Harriman National Bank. No credit had been extended by the Harriman National Bank. The credit was extended by the Harriman National Bank on February 11, 1915, when it received the pretended note and securities, the note being dated February 10, 1915, and mailed with the letter of February 7, 1915 (Exs. I, K, L, M, N, pp. 145-149; see also fols. 89, 90, p. 48).

On February 8, 1915, C. C. Slaughter in Pueblo, made out a deposit slip to the Mercantile National

Bank indicating a deposit by W. B. Slaughter of a check drawn on the Harriman National Bank in the sum of \$30,000 (*id.* p. 48; Ex. P. *id.* p. 150). But in fact, there was no such check. And at the time this deposit slip was made out no loan had been made by the Harriman National Bank, for, as already stated, the loan was not made until several days later. The clerk of the plaintiff-receiver (and bookkeeper of the Mercantile National Bank prior to the receiver's appointment) testified (*id.* p. 48):

“This deposit slip marked Exhibit P-201 is dated the eighth day of February, 1915. At that date this thirty thousand dollar fund had not been received as yet from the Harriman National Bank. This thirty thousand dollars, supposed to have been deposited on the eighth day of February, 1915, represented the proceeds of a note which was sent to the Harriman National Bank for discount. As a matter of fact, that note was only mailed to the Harriman National Bank on the 7th day of February, 1915. It takes for a letter to get from Pueblo to New York approximately, I would say, about three days and two nights.”

It is beyond dispute that the Mercantile National Bank paid the check of \$35,000 before any loan had been made by the Harriman National Bank. This was the only payment it made that had any relation to this transaction. *It made no payment whatever in reliance upon any credit extended either to W. B. Slaughter or to itself.* The credit to the Mercantile National Bank was not entered on the books of the Harriman National Bank until ten days after the Mercantile National Bank paid Slaughter's check for \$35,000.

Nor was a payment made in expectation of a loan by the Harriman National Bank, either to W. B. Slaughter or to itself. There is not a particle of evidence to sustain any view that there was any such expectation unless the knowledge of C. C. Slaughter is imputed to the Bank, in which case his knowledge of all the circumstances must be likewise imputed.

The opinion of the Circuit Court of Appeals (*id.* p. 157) that the Mercantile National Bank "innocently paid out \$35,000 on the faith of the expected transfer on the books of the Harriman Bank" has no foundation in fact. This is conclusively shown by the brief submitted to the Circuit Court of Appeals on the argument below by the counsel for the Receiver. In this brief (pp. 9, 10), counsel for the Receiver said:

"The Mercantile Bank had no knowledge of an agreement by the Harriman Bank to make a loan to the two Slaughters, nor did it rely upon any such agreement. The only knowledge which it had was received from a deposit slip handed to it by an individual, and subsequent information received from the Harriman Bank (Ex. 49) that the \$30,000 had been placed to its credit." (Italics ours.)

If this was the only knowledge that the Mercantile National Bank had, it did not know when it paid the check of \$35,000 of W. B. Slaughter on February 8, 1915, that there was an arrangement by which the Harriman National Bank was to extend a credit to W. B. Slaughter of \$30,000. If its only knowledge was the deposit slip and the subsequent information received from the Harriman National Bank, that the \$30,000 had been placed to its credit, it knew nothing of any credit of this sort prior to February 18, 1915.

Again, in their brief in the Court below, on page 13, counsel for the Receiver, referring to the letter of January 28, 1915, to the Harriman National Bank, purporting to be signed by W. B. Slaughter, and requesting the loan, said:

“The Mercantile Bank was not interested in that transaction in any way, shape or form, nor did the Harriman Bank at that time (Ex. H), nor as late as March 30, 1915 (Ex. 38), consider the Mercantile Bank connected with the loan.”

And again in the same brief (p. 20) counsel for the Receiver made this statement:

“C. C. Slaughter and W. B. Slaughter, in procuring the loan at the Harriman Bank were not in any sense acting for the Mercantile Bank, and did not purport to be so acting and there is consequently no rhyme or reason for attempting to charge the Mercantile Bank with knowledge of the fraud which was being perpetrated upon the Harriman Bank.”

In their earnest desire to escape imputation of the knowledge of the facts with respect to the transaction which the Cashier of the Mercantile National Bank was engineering, the counsel for the Receiver in the Court below stated the absolute truth with respect to the fact that the Mercantile National Bank had no agreement with the Harriman National Bank that the loan should be made, and did not in any way rely upon any such agreement or expectation in paying Slaughter's check.

As it is the payment of this check which alone could by any possible hypothesis form the basis of an estoppel it conclusively appears that the record permits of no finding of estoppel.

Moreover, even if it could be said that the Mercantile National Bank *did* pay Slaughter's check upon the faith of a statement by the Harriman National Bank that it would make the loan; if it could be imagined that the Mercantile National Bank, despite absence of evidence, did have some knowledge of the statement of the Harriman National Bank in response to the request of the letter of January 28, 1915, purporting to come from W. B. Slaughter; if it could be supposed that the telegram and letter to the effect that the Harriman National Bank were willing to make the loan had come to the knowledge of the Mercantile National Bank; *still the only statement of the Harriman National Bank was explicitly based upon the condition that it should receive the described collateral, and it could not be held to the making of the loan, or to the corresponding credit, on the delivery of forged collateral.*

To base an *estoppel*, the representation must be taken as it is made. And there is no way of assuming that the Mercantile National Bank had any right to suppose that a loan would be made to W. B. Slaughter upon forged securities or unless the Bank got the collateral which was set forth in the letter purported to be signed by W. B. Slaughter and was also described in the telegram and letter written by the Harriman National Bank in reply (Exs. G, H, *id.* p. 144).

In point of fact, as the Receiver's counsel said below, there was no representation or statement whatever with respect to any credit running to the Mercantile National Bank until February 18, 1915, after the Mercantile National Bank, which did not rely at all upon anything that the Harriman National Bank had done or agreed to do, had made its payment on February 8, 1915.

The Harriman National Bank made no agreement to loan any money to the Mercantile National Bank; there was nothing in the letter purporting to be signed by W. B. Slaughter, under date of January 28, 1915, which said anything about any payment to be made by the Mercantile National Bank; the Harriman National Bank was not advised of any payment by the Mercantile National Bank; and the only statement or promise which the Harriman National Bank ever made with respect to the making of a loan, or a corresponding credit, was that it would make a loan on a described note and collateral, and this statement or promise necessarily implied that the note and collateral security should be genuine.

The amount of \$30,000 which, in the circumstances stated, was placed to the credit of the Mercantile National Bank on the books of the Harriman National Bank on February 18, 1915, was not drawn out by the Mercantile National Bank. The amount remained on deposit until the credit was cancelled by the Harriman National Bank on March 26th. As the cashier of the ~~Mercantile~~ ^{Harriman} National Bank testified (*id.* p. 39):

“We never paid that thirty thousand dollars out to Mr. Slaughter or to the Mercantile National Bank. There was never any actual passing of that thirty thousand from our bank to any one else.”

There was some effort to show that some of the money had been paid out, but this is contradicted by the undisputed evidence. This effort is based upon the transcript of account between the Mercantile National Bank and the Harriman National Bank for the period between February 1 and Feb-

ruary 19, 1915, which shows that after the credit of this sum of \$30,000 to the Mercantile National Bank there was a balance of \$23,130.31 (Ex. 49, *id.* pp. 134-135).

But this depletion occurred *before* and not after the transfer of the credit to the Mercantile National Bank. Indeed, it was because the account was so overdrawn that the question was raised, and the transfer of the credit was due to the request received by the Harriman National Bank after the latter had informed the Mercantile National Bank on February 17, 1915, that its account was overdrawn about \$8,000. The correspondence is conclusive upon this point. Thus, on February 17, 1915, the Harriman National Bank telegraphed to the Mercantile National Bank as follows (Ex. 3, *id.* p. 97) :

“Checks presented your account appears to be overdrawn \$8,000.00. Have you remitted to cover overdraft. Slaughter’s personal balance is 30,000. Did you intend loan proceeds for credit bank wire.”

It was in response to this inquiry that the telegram in the name of the Mercantile National Bank was sent to the Harriman National Bank on February 17, 1915, as follows (Ex. A, *id.* p. 141) :

“Place thirty thousand personal account W. B. Slaughter our credit.”

It was on receipt of this telegram that the Harriman National Bank entered the credit in favor of the Mercantile National Bank and sent a letter accordingly (Ex. B, *id.* p. 141).

Later, “C. C. Slaughter, Cashier,” on the letter-head of the Mercantile National Bank, wrote a letter to the Vice-President of the Harriman National

Bank (under date of February 22nd), acknowledging the receipt of the Harriman National Bank's letter (Ex. 4 *id.* p. 98).

There is therefore no possible question but that the overdraft on the account of the Mercantile National Bank with the Harriman National Bank took place before the entry of the credit of \$30,000 on February 18th. This overdraft, as the account plainly shows, was made up of drafts on February 17th, the drafts on the 18th being only of about a hundred dollars (Ex. 49, *id.* 135, 136).

That this was fully understood upon the trial is shown by the following colloquy between the Court and counsel for the Receiver (*id.* fol. 75, p. 40).

“The Court: The books show that. As I understand it, on the 17th day of February, \$8,000 was overdrawn. That was before the application of the \$30,000?”

“Mr. Gibboney: Yes.”

Mr. Noble, the Cashier of the Harriman National Bank had just testified to this effect (*id.* pp. 39, 40).

The transcripts of account, introduced in evidence, show a balance, on February 18th, after the entry of the credit of \$30,000 in favor of the Mercantile National Bank of \$23,130.31; that is, apart from the credit of \$30,000, there was an overdraft of \$6,869.69. It appears that there was a deposit on February 18th of \$933.19 which made the actual overdraft on February 17th, independent of the credit of \$30,000, the sum of \$7,802.88 (Ex. 49, *id.* p. 134), which is evidently the amount referred to by the Harriman National Bank in its telegram of February 17th, stating that the account was overdrawn \$8,000 (Ex. 3, *id.* p. 97).

The transcript of account in evidence for February stops with February 19th. Up to that time certainly the \$30,000 which had just been entered to the credit of the Mercantile National Bank had not been withdrawn. The next transcript is for the month of March, which begins with a credit of \$67,782.50 and after the \$30,000 had been charged out of the account on March 26th there still remained a balance on March 27, 1915, of \$22,961.37 (Ex. 50, *id.* pp. 136, 138).

It is thus apparent that there was always \$30,000 in the account from the time of the credit and that there was no payment whatever which changed the position of the Mercantile National Bank.

The Harriman National Bank is thus clearly entitled to rescind the credit, induced by forged collateral, both as against the Slaughters and the Mercantile National Bank. There is no basis whatever for the finding of estoppel.

In *Selover v. First National Bank*, 77 Minn., 140, a similar question was involved and the right of the Bank to rescind a credit which it had been induced to give by fraudulent representations was sustained. There the plaintiff was an assignee of the Receiver of the Merchants' Bank of Lake City, Minnesota, and brought suit to recover the amount of the credit, or alleged deposit, which the Merchants' Bank of Lake City was alleged to have with the First National Bank of Minneapolis, Minnesota, the defendant in the case.

It appeared that the First National Bank of Minneapolis was a correspondent of the Merchants' Bank of Lake City and one Holmes was the President of the latter Bank. Holmes had borrowed of the First National Bank of Minneapolis the sum of \$4,000, for which he had given his note

to that Bank with collateral security. Each bank kept an open account with the other, and Holmes directed the First National Bank of Minneapolis to credit the account of the Merchants' Bank with the proceeds of the loan amounting to \$3,940. Thereupon, on the same day, the First National Bank of Minneapolis wrote the Merchants' Bank as follows:

"We credit your account \$3,940., proceeds W. F. Holmes note."

Ten days thereafter, the Attorney-General commenced an action to forfeit the Charter of the Merchants' Bank on the ground that it had loaned Holmes an amount in excess of that permitted by statute. A Receiver of the assets of the Bank was thereupon appointed. In the meantime the credit given to the Merchants' Bank by the First National Bank of Minneapolis remained upon the books of both Banks and had not been drawn upon by the Merchants' Bank. The First National Bank of Minneapolis notified both Holmes and the Merchants' Bank that the former had rescinded the loan to Holmes and cancelled the credit given to the Merchants' Bank. This was based upon the ground that the loan had been obtained by Holmes through false and fraudulent representations, and this was found to be the fact. The Receiver sold the claim against the First National Bank of Minneapolis to the plaintiff, who brought suit to recover the amount of the credit to the Merchants' Bank, to wit, the sum of \$3,940.

The Court denied the recovery. The Court held that there was no estoppel, or any basis whatever for a recovery, and the fact that by reason of the credit the Merchants' Bank had been induced

to give Holmes credit to the amount of \$3,940. on his antecedent indebtedness made no difference. It found that the Merchants' Bank was not protected by any doctrine of negotiability or by any principle which permitted it to profit through the fraud which had been practiced upon the First National Bank of Minneapolis.

So far as we have been able to discover, the argument in support of the Receiver's claim is substantially this: That if after the credit to the Mercantile National Bank on the books of the Harriman National Bank, obtained in the manner already described, the Harriman National Bank had put the corresponding amount of cash in a package and sent it by express to the Mercantile National Bank, it could have kept the money.

We dispute the validity of this reasoning and it would be sufficient to say that in the case proposed the Harriman National Bank, cheated by the delivery of forged collateral, could have followed the fund.

But this assumption is not necessary to dispose of this case. For the conclusive fact is that there was *no payment* to the Mercantile National Bank. There was nothing but a book entry. The position of the Mercantile National Bank was in no way changed. The only question is whether the Harriman National Bank could rescind a credit which it extended without consideration, and which it had been induced to give by delivery of forged collateral.

Again, it is said that if W. B. Slaughter had drawn a check against the amount credited to him and given the check to the Mercantile Na-

tional Bank which had been paid, the latter could have retained the avails of the check. But this introduces the question of negotiable paper. We do not concede this, we submit that the contrary is true. But here there is no check, or negotiable paper involved, as we have said, simply a transfer of a *chose in action*. And in the cases cited to sustain the contention of the Receiver (such as *American National Bank v. Miller*, 185 Fed. 338, 229 U. S. 517; *National Bank v. Burkhardt*, 100 U. S., 686), checks were involved.

THIRD. If notice could be deemed important, the Mercantile National Bank could not take the benefit of the transfer obtained through the act of C. C. Slaughter without taking the burden of the knowledge which he had.

To repeat, the credit to the Mercantile National Bank was entered on the books of the Harriman National Bank on February 18, 1915 (*id.* p. 39; Ex. B, p. 141). This was induced by a telegram in the name of the Mercantile National Bank, dated February 17, 1915 (Ex. B, *id.* p. 141) confirmed by letter of February 22, 1915 (Ex. 4, *id.* p. 98). The telegram was sent by C. C. Slaughter (*id.* fol. 84, p. 45); the letter of February 22nd, confirming it was written by C. C. Slaughter, Cashier (*id.* p. 98).

The whole transaction through which the credit was obtained by the Mercantile National Bank was the transaction, so far as the Mercantile National Bank was concerned, of C. C. Slaughter.

In this transaction C. C. Slaughter was acting for the Mercantile National Bank and was the only person acting for that Bank. The purpose of the transaction was to have the amount of the credit, which had been extended by the Harriman National Bank to W. B. Slaughter, transferred to and for the benefit of the Mercantile National Bank. It was obviously not a transaction in which C. C. Slaughter had any interest whatever adverse to the Mercantile National Bank. C. C. Slaughter had already carried through the purchase of the stock. This transaction had been consummated. The transaction through which the credit in question was transferred to the Mercantile National Bank was a transaction in fraud of the Harriman National Bank, but it was not a transaction in fraud of the Mercantile National Bank. It was an attempt to procure a benefit for the Mercantile National Bank and to get a credit for that Bank, which otherwise the Mercantile National Bank could not have obtained.

We are at a loss to understand upon what principle it can be said that the Mercantile National Bank could avail itself of the act of C. C. Slaughter in these circumstances and escape being charged with notice of the facts which in that transaction were within C. C. Slaughter's knowledge. Such a ruling is most abhorrent, as we see it, to every principle of equity. The numerous cases with respect to the fact that the knowledge of an agent will not be imputed to the principal when the agent is acting adversely to his principal it would seem clear have no application whatever to a case of this description. On the contrary, the present case falls within the familiar principle that if the Bank is to take the benefit of the act of its agent

it must take the burden of what the agent knows at the time of the transaction.

The rule as to notice, which this Court has laid down, is set forth in the case of *The Distilled Spirits*, 11 Wall. 356, 366, 367, 368:

“So that in England the doctrine now seems to be established, that if the agent, at the time of effecting a purchase, has knowledge of any prior lien, trust, or fraud, affecting the property, no matter when he acquired such knowledge, his principal is affected thereby. If he acquire the knowledge when he effects the purchase, no question can arise as to his having it at that time; if he acquired it previous to the purchase, the presumption that he still retains it, and has it present to his mind, will depend on the lapse of time and other circumstances. Knowledge communicated to the principal himself he is bound to recollect, but he is not bound by knowledge communicated to his agent, unless it is present to the agent’s mind at the time of effecting the purchase. Clear and satisfactory proof that it was so present seems to be the only restriction required by the English rule as now understood. With the qualification that the agent is at liberty to communicate his knowledge to his principal, it appears to us to be a sound view of the subject. The general rule that a principal is bound by the knowledge of his agent is based on the principle of law, that it is the agent’s duty to communicate to his principal the knowledge which he has respecting the subject-matter of negotiation, and the presumption that he will perform that duty. When it is not the agent’s duty to communicate such knowledge, when it would be unlawful for him to do so, as, for example, when it has been acquired confidentially as attorney for a former client in a prior transaction, the reason of the rule ceases, and in such a case an agent would not be expected to do that

which would involve the betrayal of professional confidence, and his principal ought not to be bound by his agent's secret and confidential information. This often happened in the case of large estates in England, where men of great professional eminence were frequently consulted. They thus became possessed, in a confidential manner, of secret trusts or other defects of title, which they could not honorably, if they could legally, communicate to subsequent clients. * * *

"On the whole, however, we think that the rule as finally settled by the English courts, with the qualification above mentioned, is the true one, and is deduced from the best consideration of the reasons on which it is founded."

In *Ditty v. Dominion National Bank*, 75 Fed. 769, the President of a bank had embezzled funds of the bank on deposit with its reserve agent and had replaced such funds with money borrowed by him on the bank's note without the directors' knowledge and such borrowed money was thereafter drawn out to pay the bank's lawful debts. In an action brought by the lender of the money to recover the same, the Court speaking through Taft, Circuit Judge, held that the receipt of the money by the bank was in itself sufficient ratification of the transaction and that it could not retain this money without assuming the burden of the President's knowledge as to how it came to be obtained.

The *Ditty* case is cited with approval by the U. S. Supreme Court in *Aldrich v. Chemical National Bank*, 176 U. S. 618, in which the following language from the opinion of Judge Taft is quoted at pages 633 and 634 thereof:

“ ‘In our opinion, even if the president may not have had authority to effect the loan, yet when he, in order to conceal his previous embezzlement, deposited the sum to the credit of the Citizens’ Bank with its reserve agent in New York, and it was checked out for the benefit of the bank, the bank and its board of directors were affected with the knowledge which Overman as its president had of the receipt of the moneys. Having received the benefit through an agent, it is affected with the burden of the notice which that agent had of its reception, and therefore it became liable for money had and received to its use from the Dominion Bank. We think the same principle applicable in this case which was applied in the case of *Atlantic Cotton Mills v. Indian Orchard Mills*, 147 Mass. 268. In that case the treasurer of two corporations was a defaulter in both positions. The defalcations were of long standing, and to avoid discovery at the annual settlement of one company he drew checks of the other and deposited them to the credit of the one company in the bank. The question was whether the company whose bank account had been swelled by the checks of the other was a debtor to the other for the deposits thus made by the common treasurer. It was held that the company receiving the money, having received it through the sole agency of the man who knew it to be stolen, could only take and hold it with the burden of his knowledge. So in this case the bank, having received the money through the agency of its president, could not retain it without assuming the burden of the president’s knowledge as to how it came to be obtained. We do not see that the circumstance in one case that the treasurer stole the money and in the other that the president obtained it on the false representation that he was authorized to borrow it for his bank makes any reasonable distinction between the two cases.’ ”

In the case of *Holden v. New York and Erie Bank*, 72 N. Y. 286, one Ganson was president of the defendant bank and also its sole manager. He was also the executor of the estate of William R. Gwinn and had a deposit of about \$17,000 in such bank as such executor. The referee found the following facts: That Ganson with the fraudulent intent to place the sum of \$28,000 belonging to the Gwinn Estate in the stock of such bank at its par value then being the property of Ganson and to transfer the said sum of \$17,000 to the account of Ganson in his private capacity, procured one Seymour to execute to Ganson his promissory note for \$28,000, payable to the order of Ganson on demand, and upon said note Ganson immediately endorsed a payment of \$17,000. At the same time and as a part of the transaction Ganson executed to Seymour his promissory note for \$28,000 dated the same day as the other note, payable to the order of Seymour on demand, and thereupon Ganson endorsed on the note a payment of \$17,000. Ganson then made his check as executor of the Gwinn Estate on the defendant bank for \$17,000, payable to himself, and the bank transferred said sum from the credit account of Ganson as executor and placed the same to the credit of Ganson's private account. Ganson transferred to Seymour 280 shares of the stock of the bank and immediately Seymour re-transferred the same to Ganson as executor and the bank issued a new certificate therefor and made corresponding entries in the books of the bank. Shortly thereafter Ganson died and a week after Ganson's death the bank was declared insolvent and placed in the hands of a Receiver. It was disclosed that at the time of the transfer of said stock the bank was insolvent

and the stock was worthless, all of which was known to Ganson. No officer of the bank other than Ganson took part in any of such transactions. An action was brought by the plaintiff on behalf of the Gwinn Estate to recover the \$17,000 transferred by the bank to the individual account of Ganson. It also appeared that at the time the bank transferred the said sum of \$17,000 to the individual account of Ganson, the latter had overdrawn his private account with the bank in the sum of over \$6,000 and that Ganson was also indebted to the bank in the sum of upwards of \$50,000, not appearing in his individual account. Therefore, the Court found that the bank profited at once by the transfer of the sum from the executor's account to Ganson's individual account.

Folger, J. said:

“To rightly consider this case, we must look upon Ganson, the chief actor in the transaction, in three capacities. They are not altogether consistent, but he exercised them all. His more immediate interest was personal, and in that he acted as an individual. He was also an agent of the bank, its principal financial officer, the real and constant controller and manager of its affairs; indeed, it is not easy to separate him from it, or to consider him as other than the bank itself, so completely were the affairs of it subject to his will and under his immediate management. He was also the executor of the will of Gwinn, and, by virtue of that office, the trustee of the fund created by that instrument.

“And what were the material facts in this case, a knowledge, and the existence of which made the transaction unjust toward the cestuis que trust, and, therefore, fraudulent upon them? They were the worthlessness of the stock arising from the impaired condition of

the bank; the large indebtedness of Ganson to the bank, as an individual, and as a member of two more partnerships, real or nominal, and his inability to meet that indebtedness from his own co-partnership means; that the bank was upon its books, and, in fact, a debtor to the estate of Gwinn for a deposit, subject to immediate withdrawal, which was payable only upon the check of Ganson, as executor; that it was, at the same time, a creditor of Ganson as an individual, in his exhausted pecuniary state; that Ganson was, contrary to his duty to the estate of Gwinn and to the cestuis que trust, about to invest, and did invest, some of the funds of that trust in stock of the bank, the shares of which he owned in his own right, and did thus shift from himself to the trust fund, property unfit for a permanent investment of such a fund. Of all these funds Ganson had knowledge, either as the prime officer of the bank, or as an individual or as executor.

“As a matter of fact, whatever knowledge, information or notice, he had in either of these capacities, he carried with him into his exercise of the other. As agent of the bank, he owed it a duty in every transaction in which the bank took a part, under his observation. Hence, as matter of law, whatever notice of facts he had in any capacity, which were material in the performance by him of the part of the bank in any transaction, became notice to the bank, his principal, as it was his duty to give it notice thereof in that matter. It is the rule, that the knowledge of the agent is the knowledge of his principal, and notice to the agent of the existence of material facts is notice thereof to the principal, who is taken to know everything about a transaction which his agent in it knows.
* * * We doubt not that the knowledge of Ganson of the facts above detailed was chargeable to the bank, so far as that knowl-

edge was material in the transaction now under consideration. It mattered not when, during the course of his prior official management of the affairs of the bank, he acquired the knowledge; it was knowledge acquired in its business, and applicable to any subsequent transaction in which it was material. This may be tested by supposing that it was not Ganson who was the controlling officer of the bank, but some other person. Would not whatever that person knew or had notice of before this transaction, in his official capacity, as to the state of the bank, as to Ganson's relations to it, as to the state of the latter's accounts as an individual and as executor or otherwise, affect this transaction as much as if told to him at the moment of the transaction taking place? That Ganson held triple relations to the matter did not alter his relation to the bank, his principal, nor did it hinder his knowledge acquired as an agent, from affecting his principal in the part he took as an agent. The subject matter of his agency was the conduct and direction of the affairs of this bank. He represented the bank in all these transactions. He was every time of them engaged in the business of the bank. Notice to him while so engaged, though not otherwise received than by the possession of knowledge acquired by him while acting in another capacity, was notice to the bank. That is a necessary result of his triple character."

If the Mercantile National Bank, on February 17, 1915, did not request the transfer of the credit to its account, then it can take nothing thereby. If the act of C. C. Slaughter in directing the transfer of the credit was unauthorized and in no way bound the Bank the transfer was ineffectual. If, on the other hand, it is deemed that C. C. Slaughter acted for the Mercantile National Bank in this

transaction, then we submit it must necessarily follow that his act was the act of the Bank and his knowledge in performing that act was the knowledge of the Bank.

The Mercantile National Bank could not take this credit and enforce the payment of this money which remained in the account and leave the Harriman National Bank to suffer from the fraud perpetrated upon it by the Slaughters.

The Mercantile National Bank, we may say once again, had no agreement whatever with the Harriman National Bank. As the Receiver's counsel truly said below, the Mercantile National Bank when it paid Slaughter's check had no knowledge of an agreement with the Harriman National Bank to make a loan to the Slaughters or to either of them, and it did not rely upon any such agreement; the credit obtained from the Harriman National Bank was obtained upon forged collateral; the Mercantile National Bank simply trusted its President, the Harriman National Bank was deceived by fictitious securities, and the Mercantile National Bank cannot throw upon it consequences of its own confidence and the burden of its own loss.

Fourth: The Receiver of the Mercantile National Bank stands in no better position than that in which the Bank itself stood.

The Harriman National Bank actually cancelled the credit in favor of the Mercantile National

Bank and charged the amount in question to its Sundry Account on March 26, 1915 (Ex. 50, *id.* p. 140), that is, before the suspension of the Mercantile National Bank, which took place on March 29, 1915 (Ex. 13, *id.* p. 101). The Harriman National Bank had received no advice or confirmation from W. B. Slaughter with respect to the transfer of the credit and, apart from this fact, the Harriman National Bank was entitled to cancel the credit which had been induced by fraud, as the event showed.

When the Receiver was appointed, the amount in question no longer stood to the credit of the Mercantile National Bank and the latter was not entitled to recover this amount.

Nor would it have made any difference if the amount had not been taken out of the account until after the Receiver was appointed, as the appointment of the Receiver could not create an equity which had not been previously possessed by the Mercantile National Bank.

The Receiver of a Bank stands in no better position than that in which the Bank itself stood.

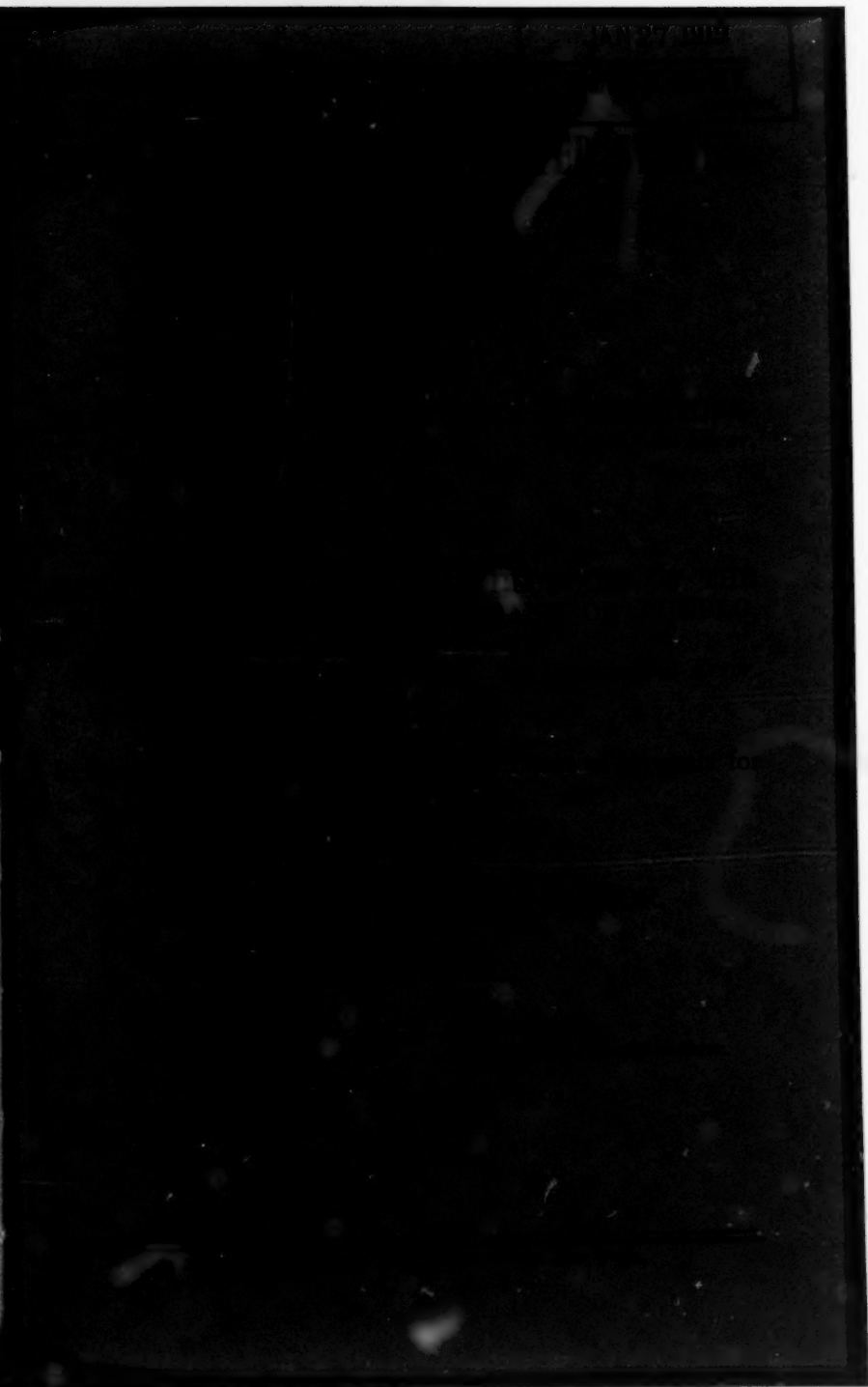
Rankin v. City National Bank, 208 U. S. 541.

The judgment of the Circuit Court of Appeals should be reversed and the complaint dismissed.

WESSELMAN & KRAUS,
Solicitors for Plaintiff-in-Error.

CHARLES E. HUGHES,
BERTRAM L. KRAUS,
Of Counsel.





SUBJECT INDEX.

| | PAGES |
|---|-------|
| Statement of Case..... | 1 |
| Statement of Facts..... | 2 |
| Points. | 8 |
| POINT I: The defendant-in-error, plaintiff below, established a <i>prima facie</i> case.. | 8 |
| POINT II: The knowledge of C. C. Slaughter cannot be imputed to the Mercantile Bank. | 16 |
| POINT III: There was no error on the part of the trial court in the admission of evidence offered on behalf of the plaintiff below. | 21 |
| POINT IV: Plaintiff-in-error presents no convincing argument or controlling authority. | 28 |

Cases Cited.

| | PAGES |
|--|--------|
| Aldrich <i>v.</i> Chemical National Bank, 176 U. S. 618. | 28 |
| American National Bank <i>v.</i> Miller, 229 U. S. 517. | 13, 16 |
| American Surety Co. <i>v.</i> Pauley, 170 U. S. 133. | 17 |
| Ballew <i>v.</i> U. S., 160 U. S. 187. | 9 |
| Bank of Overton <i>v.</i> Thompson, 118 Fed. 798. | 18 |
| Daintry <i>v.</i> Evans, 148 N. Y. App. Div. 275. | 10 |
| Ditty <i>v.</i> Dominion National Bank, 75 Fed. 769. | 28 |
| Distilled Spirits, 11 Wall. 356. | 28 |
| Hilliard <i>v.</i> Lyons, 180 Fed. 798. | 18 |
| Holden <i>v.</i> N. Y. & Erie Bank, 72 N. Y. 286. | 28 |
| Leather Mfgs. Bank <i>v.</i> Merchants Bank, 128 U. S. 26. | 9 |
| Leather Mfgs. Bank <i>v.</i> Morgan, 117 U. S. 96. | 10 |
| Levy & Cohn Mule Co. <i>v.</i> Kaufman, 114 Fed. 170. | 18 |
| National Bank <i>v.</i> Burkardt, 100 U. S. 686. | 14, 15 |
| New York County Nat'l Bank <i>v.</i> Massey, 192 U. S. 138. | 9 |
| Oddie <i>v.</i> National City Bank, 45 N. Y. 735. | 15 |
| Selover <i>v.</i> First National Bank, 77 Minn. 110. | 27 |
| Union Stockyards Nat'l. Bank <i>v.</i> Gillespie, 137 U. S. 411. | 9 |
| U. S. Hair Co., 239 Fed. 703. | 18 |

Supreme Court of the United States.

OCTOBER TERM, 1918

No. 173.

THE HARRIMAN NATIONAL BANK
OF NEW YORK,
Plaintiff-in-Error,

vs.

HARRY H. SELDOMRIDGE as Receiver of the Mercantile National Bank of Pueblo, Colorado,
Defendant-in-Error.

BRIEF FOR DEFENDANT IN ERROR.

Statement of Case.

The defendant-in-error, original plaintiff, recovered a judgment against the plaintiff-in-error in the United States District Court for the Southern District of New York. Upon a writ of error obtained by the original defendant, the Circuit Court of Appeals for the Second Circuit affirmed the judgment and from that affirmance this writ of error is prosecuted.

The brief for the plaintiff-in-error does not contain a specification of the errors relied upon, although the transcript of the record contains assignments of error numbering seventy-two (p. 160 et seq). We shall, therefore, as concisely as may be, point out, first, why the judgment should be affirmed, and second, why the argument and cases cited by the plaintiff-in-error are not controlling.

Statement of Facts.

The Harriman National Bank was the New York correspondent of the Mercantile National Bank, and as such maintained upon its books an account of the Mercantile National Bank wherein debits and credits were made of eastern items and a statement of the account forwarded to the Mercantile Bank at the end of each month, and at such other times as called for (p. 38). W. B. Slaughter was president of the Mercantile National Bank, and his son, C. C. Slaughter, was cashier. The banking business was attended to by the son (p. 59). The cause of action here asserted grows out of a fraud perpetrated by the son in procuring a loan in the name of his father and himself from the Harriman Bank, the proceeds of which loan, originally credited by the Harriman Bank on its books to W. B. Slaughter personally, were transferred to the Mercantile National account (p. 38, Ex. 10, p. 100; Ex. 11, p. 101), left there for over six weeks and then, without direction or authority, withdrawn by the Harriman Bank, placed in a sundry account (p. 39, Ex. E, p. 142), and four days later used in payment of the joint Slaughter note from which the credit was originally received (Ex. 38, p. 121). The transactions are largely expressed in writing.

On January 28, 1915, C. C. Slaughter dictated a letter to the Harriman Bank requesting a loan of \$30,000 to be used in the purchase of the stock of the First National Bank of Silverton, Colorado. The letter bore a rubber stamp signature "W. B. Slaughter" (Ex. F, p. 143).

February 1, the Harriman Bank telegraphed to W. B. Slaughter that it would loan him upon the joint note of himself and C. C. Slaughter \$30,000 for sixty days (Ex. G, p. 144). On the same day the Harriman Bank wrote to W. B. Slaughter personally confirming the telegram (Ex. H, p. 144).

The next step in chronological order was the purchase on Saturday, February 6, 1915, of all of the stock of the First National Bank of Silverton from M. D. Thatcher, on which day, in partial payment therefor, a check for \$35,000 drawn on the Mercantile National Bank and signed "W. B. Slaughter by C. C. Slaughter" was delivered to Mr. Thatcher (Ex. 37, p. 121). That check was paid on Monday, February 8, 1915, by the Mercantile National Bank (p. 80). To make the check good, C. C. Slaughter, by means of a deposit ticket (Ex. P, p. 150) in his own handwriting, indicated the deposit of funds in the Harriman Bank to the extent of \$30,000 to the credit of the Mercantile National, and thereupon the Mercantile National credited the account of W. B. Slaughter with \$30,000, likewise debiting the Harriman account (p. 48). Such a transaction, upon its face, was entirely regular. W. B. Slaughter had prior thereto borrowed money at the Harriman Bank which he had had credited to the Mercantile Bank for his benefit (Ex. 20, p. 105; p. 70).

Between the time of delivering the check for \$35,000 to Mr. Thatcher, and the making of the

deposit of \$30,000, and on February 7th, C. C. Slaughter wrote another letter to the Harriman Bank enclosing a note purporting to have been signed by himself and his father, and which letter purported to be signed by his father, in which he stated:

“Will ask you to kindly place the proceeds of this note to my credit. If for any reason this note is not satisfactory kindly wire as I am drawing on the funds on Monday” (Ex. F, p. 143).

The note was received and discounted by the Harriman Bank, and the proceeds credited to W. B. Slaughter personally on February 10, 1915. That was the only credit ever made to his account, except, perhaps, a credit made by mistake a few days later (p. 90).

Nothing more was heard of the matter until February 17th, when the Harriman Bank telegraphed to the Mercantile Bank that its account was overdrawn, and “Slaughter’s personal balance is \$30,000. Did you intend loan proceeds for credit bank wire” (Ex. 3, p. 97), to which a telegraphic reply was sent under the same date:

“Place thirty thousand personal account W B Slaughter our credit.

Mercantile National Bank.”

(Ex. A, p. 141.)

That telegram was dictated by C. C. Slaughter and sent out by him (p. 45).

On receipt of that telegram the Harriman Bank transferred \$30,000 from the account of W. B. Slaughter to the account of the Mercantile National Bank, and asked for a confirmation, the

letter advising such a step (Ex. B, p. 141) being addressed to W. B. Slaughter personally. That was answered by a letter dated February 22 (Ex. 4, p. 98), signed "C. C. Slaughter, Cashier," and stating that it was in confirmation of the telegram directing the transfer, and further "we understood this was our original instructions to you."

That letter was received by the Harriman Bank and answered under date of February 25 (Ex. 5, p. 98). It apparently accepted that confirmation and rested secure until March 23, 1915, six weeks after the original transaction, when a telegram was received, signed by W. B. Slaughter, as follows:

"Cancel authority C. C. Slaughter as an officer of this bank as of date to-day resigned" (Ex. 9, p. 100)

receipt of which was acknowledged March 24, 1915 (Ex. 8, p. 99).

The next day, March 25th, the assistant cashier of the Mercantile Bank telegraphed to the Harriman Bank requesting a statement of account, and cancelling all guarantees of the Mercantile Bank and its officers or directors subsequent to that date (Ex. 12, p. 101).

March 26th, the Harriman Bank telegraphed to W. B. Slaughter (Ex. D, p. 142) as follows:

"W. B. SLAUGHTER, President,
Mercantile National Bank,
Pueblo, Colorado.

We credited your personal account thirty thousand dollars, February tenth, proceeds of loan. Under instructions from C. C. Slaughter, February eighteenth, we charged your personal account and credited account Mercantile National Bank with this thirty thou-

sand dollars. Inasmuch as we have not received confirmation and instructions from you personally as requested we have this day charged Mercantile National Bank thirty thousand dollars and hold the amount out of their account and in our sundry account subject to adjustment of which please take note. Balance of Mercantile National Bank after this deduction is twenty-three thousand dollars odd.

HARRIMAN NATIONAL BANK,
JOHN A. NOBLE, Cashier."

which telegram was followed by a letter also addressed to Mr. W. B. Slaughter under the same date, confirming the telegram, and continuing:

"Inasmuch as there is some misunderstanding with regard to this loan we have taken the above said action" (Ex. E, p. 142).

Not one word of request to the Mercantile National Bank for confirmation of the transfer from W. B. Slaughter's personal account to the Mercantile account; and not one word of advice to the Mercantile Bank of the transfer from its account to the sundry account, except in so far as communications addressed to W. B. Slaughter, "personal" and "president," are to be found in the record.

March 29th, the examiner in charge of the Mercantile Bank telegraphed to the Harriman Bank advising of the suspension of the Mercantile (Ex. 13, p. 101). That telegram was received and acknowledged on the same date (Ex. O, p. 150).

On March 30th, the note of W. B. Slaughter and C. C. Slaughter was charged against the credit of \$30,000 held in the sundry account by the Harriman Bank (Ex. 38, p. 121).

At the end of February the Harriman Bank sent the Mercantile Bank a statement of its account for that month (Ex. 49, p. 133). That statement shows the transfer of the \$30,000 to the credit of the Mercantile, and it also shows that part of it was withdrawn, the balance being \$23,190.31. This was a statement of the account. A similar statement was sent for the month of March (Ex. 50, p. 136), and the last item which appears on it is the charge against the Mercantile Bank of the \$30,000 under date of March 26th.

True, the letter of January 28th requesting the loan, bore a rubber stamp signature of W. B. Slaughter. True, the note bore the signature W. B. Slaughter, made by one Wheatley. True, a part of the stock deposited as collateral security for the note was fictitious and a forgery of the worst character. If it were necessary to decide in this case whether W. B. Slaughter had knowledge of this transaction, in fact, whether he instigated it or not, we have no doubt in saying that the Court or a jury would so find. The correspondence between father and son is convincing. But such a decision is not necessary to the determination of this writ of error.

The Mercantile Bank on having presented to it a deposit slip showing that the Harriman Bank was in funds to the extent of \$30,000 for the benefit of W. B. Slaughter, in good faith credited Slaughter's account with that sum and debited the Harriman National. It permitted W. B. Slaughter to withdraw those funds from his account forthwith. It is apparent, therefore, that the Mercantile Bank received no benefit from the transaction and is not in the position where a benefit received must be restored before it can

prosecute an action to a successful conclusion. On the contrary, the Mercantile Bank is out of funds to the extent of \$30,000, and unless this judgment is sustained will continue in that position.

Points.

FIRST: The defendant-in-error, the original plaintiff, established a prima facie case and was entitled to the direction of a verdict in his favor.

SECOND: The knowledge of C. C. Slaughter of the fraud which he was perpetrating upon the Harriman Bank cannot be imputed to the Mercantile Bank of which he was cashier, because in his dealings it was to his interest to withhold the knowledge of that fraud.

THIRD: There was no error on the part of the trial court in the admission of evidence offered on behalf of the plaintiff below.

FOURTH: There is no convincing argument or controlling authority on which to base a reversal.

POINT I.

The defendant in error, plaintiff below, established a prima facie case.

The cashier of the Harriman Bank testified that the Mercantile Bank opened an account with the former about January, 1912; that at the close of business March 25, 1915, the credit balance of the Mercantile was \$53,276.86, and that on March 26,

1915, four debit charges, one of \$30,000, were made against the account (p. 38). And further:

"I know of no instructions or orders ever received from the Mercantile National Bank directing the withdrawal of \$30,000. No part of the \$30,000 which I have transferred or debited there have ever been paid to the Mercantile National Bank or its receiver" (p. 38).

We therefore have not only the book entries of the transactions, but we have the actual testimony of the cashier of the plaintiff-in-error. That testimony constituted a complete case, and unless the transaction was in some way explained by the Harriman Bank in such a manner as to show fraud by the Mercantile Bank or mutual mistake the trial court could take no step except to direct a verdict.

The ordinary relation between a bank and a depositor is that of debtor and creditor. *Union Stockyards National Bank vs. Gillespie*, 137 U. S. 411; *Ballew vs. U. S.*, 160 U. S. 187; *New York County National Bank vs. Massey*, 192 U. S. 138.

The Mercantile Bank, having to its credit some fifty-three odd thousand dollars, was entitled to use that money as it saw fit unless it was guilty of the perpetration of some fraud, and the Harriman Bank was bound to retain that amount of money and pay it out only upon the order of the Mercantile Bank. Concededly it withdrew \$30,000 of the credit balance without any such order.

The general rule as to the payment to a depositor is concisely stated in *Leather Mfgs. Bank vs. Merchants Bank*, 128 U. S. 26.

"A bank cannot discharge its liability to account to a depositor to the extent of the deposit except by a payment to him or to the holder of a written order from him usually in the form of a check."

The testimony shows that the custom of the Harriman Bank was to send to the Mercantile Bank a statement of its account at the end of each month, and at such other times as such a statement was requested (p. 90). At the end of February it did send a statement (Ex. 49, p. 133), which shows between February 16th and February 18th, a transfer credit of \$30,000.

That statement sent to the Mercantile Bank showing the credit was binding on the Harriman Bank unless there was some mutual mistake or fraud.

In *Leather Mfgs. Bank v. Morgan*, 117 U. S. 96, the Court said:

“The sending of his passbook to be written up and returned with vouchers is therefore in effect a demand to know what the bank claims to be the state of his account, and the return of the book with the vouchers is the answer to that demand, and in effect imports a request by the bank that the depositor will in proper time examine the account so rendered and either sanction or repudiate it.”

In *Daintry vs. Evans*, 148 N. Y. App. Div., 275, the Court held:

“Where an account is duly rendered showing a balance the party receiving it and not objecting thereto within a reasonable time shall be deemed from his silence to have acquiesced therein, and will be bound by it as an account stated in the absence of proof of fraud or mistake.”

No mistake on the part of the Mercantile Bank has been shown or attempted to be shown, so that the question of mutual mistake is entirely eliminated and we are left only to the question of fraud which is subsequently discussed.

The defendant below attempted to explain the \$30,000 transaction by testimony which we submitted at the time of the trial was immaterial, and we still submit that it has no relevancy to the issue here involved. In substance, however, it was that the Harriman Bank agreed to loan \$30,000 upon the joint note of W. B. and C. C. Slaughter, respectively father and son, president and cashier of the Mercantile Bank. A note purporting to have been signed by the two Slaughters, and in fact signed by C. C. Slaughter, was sent to the Harriman Bank, by it discounted, and under instructions contained in the letter enclosing the note, the proceeds of discount were deposited to the credit of W. B. Slaughter on February 11, 1915, and retained in that account until February 17, 1915, when acting upon a telegram signed by the Mercantile National Bank the amount was transferred to the credit of the Mercantile Bank. On February 8th, C. C. Slaughter, acting as an individual, and not as an officer of the Mercantile Bank, presented to the latter bank a deposit ticket of \$30,000 which purported to show that amount of money deposited in the Harriman Bank to the credit of the Mercantile Bank. After receiving that deposit ticket crediting \$30,000 to W. B. Slaughter and debiting the Harriman Bank, the Mercantile Bank permitted a withdrawal of \$35,000 by a check of W. B. Slaughter signed by C. C. Slaughter.

The record is so full of checks upon the account of W. B. Slaughter signed by C. C. Slaughter, that we submit there is no question of the right of C. C. Slaughter to draw against his father's account; and, in fact, W. B. Slaughter himself testifies that he never objected to a check against his account signed by his son, and that he knew that funds

were withdrawn from his account in that way, and that he, W. B. Slaughter, attended to the cattle business while his son, C. C. Slaughter, attended to the various banking institutions (pp. 59, 61, 64).

The Mercantile Bank had no knowledge of an agreement by the Harriman Bank to make a loan to the two Slaughters, nor did it rely upon any such agreement. The only knowledge which it had was received from a deposit slip handed to it by an individual, and the subsequent information received from the Harriman Bank (Ex. 49) that the \$30,000 had been placed to its credit. The Mercantile Bank had no knowledge of any fraud and had no knowledge of any irregularity in the transaction, and none can be imputed to it, as we subsequently point out. Had that loan not been made by the Harriman Bank, and the transfer to the Mercantile account subsequently not been made, not only upon receipt of the statement at the end of February, but also on receipt of notice that its account was overdrawn on February 17th, the Mercantile would have discovered that its account was short \$30,000, and a checking up would have readily disclosed that it was the \$30,000 deposited to the credit of W. B. Slaughter, and it would then have looked to W. B. Slaughter for the \$30,000. But the loan was made, the credit was passed. The Mercantile Bank was notified of the credit. The credit was continued for weeks

The transfer from W. B. Slaughter to the Mercantile Bank on February 17th, upon the telegram written by C. C. Slaughter in the name of the Mercantile, had the same effect as would the deposit of cash. Then was the time for the Harriman Bank to question the authority of the telegram. The question should have been raised before the transfer, not after.

Perhaps the case most nearly corresponding with that now before the Court is *American National Bank v. Miller*, 229 U. S. 517, in which Miller, examiner in charge of the Macon Bank, sued the American National Bank to recover a deposit of \$3,000 made in the American National Bank by the Macon Bank in the form of a check drawn by Plant, President and general manager of the Macon Bank, on the American National to the order of the Macon Bank for \$3,000, to be used in payment of a portion of the indebtedness of Plant to the Macon Bank. At the time of drawing the check Plant, to his own knowledge, was insolvent. Upon receipt of the check, the Macon Bank forwarded it to the American National to be deposited, with instructions to credit the proceeds to its account. Upon receipt of the check by the American National it was credited to the Macon account and charged against Plant's account, of which notice was given to the Macon Bank by mail. Plant, during all of the time mentioned, was also engaged in a private banking business known as I. C. Plant & Son. On the day of the crediting of the Macon account by the American National, Plant's private bank did not open, and later in the morning the Macon Bank closed its doors and a petition in bankruptcy was filed against Plant individually. Nine days thereafter the American National credited back to Plant's individual account the \$3,000 charged previously, and debited the same to the Macon Bank upon the ground that it had the right to offset Plant's deposit account against his indebtedness. Suit was started to recover the \$3,000 so taken away from the Macon Bank. In affirming a judgment in favor of Miller, the Court said:

“There are some disadvantages of sending a check for collection directly to the bank on which it is drawn, but when such bank performs the dual function of collecting and crediting, the transaction is closed and, in the absence of fraud or mutual mistake, is equivalent to payment in usual course. *National Bank v. Burkhardt*, 100 U. S. 686-689. In the present case it was as though an officer of the Macon Bank had presented the check to the teller of the Nashville Bank and, on receiving the money, had paid it back over the counter for deposit to the credit of the Macon Bank.”

In *National Bank v. Burkhardt*, 100 U. S. 686, it is said:

“When a check on itself is offered to a bank as a deposit, the bank has the option to accept or reject it, or to receive it upon such conditions as may be agreed upon. If it be rejected there is no room for any doubt or question between the parties. If, on the other hand, the check is offered as a deposit and received as a deposit, there being no fraud and the check genuine, the parties are no less bound and concluded than in the former case. Neither can disavow or repudiate what has been done. The case is simply one of an executed contract. There are the requisite parties, the requisite consideration and the requisite concurrence and assent of the minds of those concerned. * * * If the bank proposed to hold the check on conditions, it was but fair and just to the other party to have said so when it was received, and thus have given him the option, after such notice, to do with it as he might think proper. The saving or loss of the amount to the payees might have depended on the promptitude and energy of their conduct. Delay until after bank hours might have determined the result inevitably against them. It would be

contrary to plainest principles of reason and justice to permit a bank under such circumstances, to shift the burden of the loss from itself to the shoulders of an innocent depositor."

To the same effect see *Oddie vs. The National City Bank*, 45 N. Y. 735, cited with approval in *National Bank vs. Burkhardt*, supra.

What matters it that the Mercantile had not forwarded a check signed by W. B. Slaughter? It had his authority, his assignment, in the form of a deposit ticket. And it paid out all of the funds for his benefit. The Harriman Bank accepted a telegram as sufficient authority for the transfer. Of the sufficiency of that authority, it was the sole judge. The individual who was acting, C. C. Slaughter, originally intended the credit to go to the Mercantile Bank (Ex. 4, p. 98). That was the way it had been handled before. Both banks were acting in good faith. The Mercantile Bank was merely receiving a deposit and paying it out on a proper check. The Harriman Bank was making a loan upon forged security. A little care on its part would have saved the situation. How could Slaughter forward, on Sunday, stock which he was to buy on the following day? That did not occur to the Harriman Bank.

Therefore, we assert: The Harriman Bank made a loan to the Slaughters; it passed credit for the loan to the Mercantile Bank; it permitted the Mercantile Bank to retain that credit until a climax was reached. Then, at the expense of the Mercantile Bank, it sought to save itself. The Mercantile Bank had acted, it had paid out the money, and it is now entitled to recover.

POINT II.**The knowledge of C. C. Slaughter cannot be imputed to the Mercantile Bank.**

The Harriman Bank received a letter dated January 28, 1915, bearing a rubber stamp signature of W. B. Slaughter, in which application was made for a loan of \$30,000 upon a note to be signed jointly by W. B. and C. C. Slaughter, and the proceeds to be used in the purchase by the Slaughters of stock of the First National Bank of Silverton.

The Mercantile Bank was not interested in that transaction in any way, shape or form, nor did the Harriman Bank at that time (Ex. H, p. 144), nor as late as March 30, 1915 (Ex. 38, p. 121), consider the Mercantile Bank connected with the loan.

The Slaughters were acting in their individual capacities, and in a transaction in which they were personally interested, and their interests were adverse to those of the bank.

The rule is well stated in *American National Bank vs. Miller*, supra, as follows:

“This presents another phase of the oft-recurring question as to when and how far notice to an agent is notice to his principal. In view of the many decisions on the subject it is necessary to do more than to apply them to the facts of this case. If Plant, within the scope of his office, had knowledge of a fact which it was his duty to declare and not to his interest to conceal, then his knowledge is to be treated as that of the bank. For he is then presumed to have done what he ought to have done and to have actually given the information to his principal.

But if the fact of his own insolvency and of

his personal indebtedness to the Nashville Bank were matters which it was to his interest to conceal the law does not by fiction charge the Macon Bank, of which he was president, with notice of facts which the agent not only did not disclose but which he was interested in concealing."

In *American Surety Company vs. Pauley*, 170 U. S. 133, an action by a Receiver of a National Bank to recover upon a bond for the faithful performance of the duties of cashier, brought after the discovery of fraud upon the bank committed by the cashier, in affirming a judgment in favor of the receiver, it is said at page 156:

"The presumption that the agent informed his principal of that which his duty and the interests of his principal required him to communicate does not arise where the agent acts or makes declarations not in execution of any duty that he owes to the principal, nor within any authority possessed by him, but to subserve simply his own personal ends or to commit some fraud against the principal. In such cases the principal is not bound by the acts or declarations of the agent, unless it be proved that he had at the time actual notice of them, or having received notice of them failed to disavow what was assumed to be said and done in his behalf. * * * In *Henry vs. Allen*, 151 N. Y. 1, 10, the court recognized the general rule, but after observing that it rested upon the agent's duty to disclose such facts to its principal, it held that one of the exceptions was that where the agent was 'engaged in a scheme to defraud his principal the presumption does not prevail, because he cannot in reason be presumed to have disclosed that which it was his duty to keep secret, or that which would expose or defeat his fraudulent purpose.' "

In *Levy & Cohn Mule Company vs. Kaufman*, 114 Fed., 170 (C. C. A. 5th Cir.), it is held:

"The general proposition is true, that notice of facts to an agent is constructive notice to the principal when it arises from or at the time is connected with the subject of his Agency. The rule is based on the presumption that the agent has communicated such facts to his principal. * * But neither the rule nor the reasons for it apply to a transaction in which the agent is acting for himself. When, therefore, the president of a corporation is dealing with it on his own business, his interest is opposed to its interest, and the presumption is that he will not communicate any secret infirmity of the title which he is about to convey to the corporation. * * * It should be borne constantly in mind that the cases where notice to the president or any other officer of a corporation will affect the corporation, are cases where such president or officer is acting exclusively for the corporation."

See also *Bank of Overton v. Thompson*, 118 Fed. 798 (C. C. A. 8th Cir.); *Hilliard v. Lyons*, 180 Fed. 685 (C. C. A. 3rd Cir.); *In re United States Hair Co.*, 239 Fed. 703 (C. C. A. 2nd Cir.).

It is asserted at page 38 of the brief of the plaintiff-in-error that C. C. Slaughter was acting for the Mercantile Bank, and that the purpose of the transaction was to have the amount of the credit which had been extended by the Harriman Bank to W. B. Slaughter transferred to and for the benefit of the Mercantile National Bank, and was obviously not a transaction in which C. C. Slaughter had any interest whatever adverse to the Mercantile National Bank.

We are unable to understand how such a construction can be placed on the facts as disclosed by

the record. The fact is exactly contrary. W. B. and C. C. Slaughter were purchasing the stock of the First National Bank of Silverton. On February 10, 1915, a certificate for 450 shares was issued to W. B. Slaughter, and a certificate for 10 shares was issued to C. C. Slaughter (p. 81). It was imperative that the deal be closed on Saturday, February 6th (Ex. 47, p. 130). A payment of \$35,000 was made to Mr. Thatcher (Ex. 37, p. 121), and the loan was procured so that the purchase might be made (Ex. F, p. 143). The Mercantile Bank had no interest in the purchase, but as an accommodation to Slaughter, who was in control, it accepted the deposit ticket (Ex. P, p. 150) as sufficient indication of a deposit of \$30,000 in the Harriman Bank to the credit of the Mercantile Bank for the benefit of W. B. Slaughter, and he was immediately permitted to withdraw those funds from the Mercantile Bank. If C. C. Slaughter had disclosed to the Mercantile Bank that he was sending to the Harriman Bank a questionable note, that he was sending forged collateral, then, of course, the Mercantile Bank, regardless of the Slaughter control, would not have honored the check to Mr. Thatcher and, no doubt, would have advised the Harriman Bank of the forgery and the loan would not have been made. Then there would have been no loss to any one because the sale by Mr. Thatcher to the two Slaughters would not have been completed. But C. C. Slaughter, as well as his father, wanted to purchase the First National Bank of Silverton, and, of course, he suppressed all knowledge of his own fraud.

How, then, it can be contended that Slaughter was acting for the Mercantile Bank, or that the

Mercantile Bank derived any benefit, we are unable to understand.

The plaintiff-in-error has made a long argument based on the theory that the Mercantile Bank stood in the Slaughters' shoes (p. 20 of brief). That might be true if it had had knowledge of the fraud, but it had no such knowledge.

The Mercantile Bank did not derive its right to the \$30,000 by any connection with the loan. On the contrary, it derived its right by paying out its money on the order of W. B. Slaughter's agent, his son, on the assertion that that amount had been deposited to its credit in the Harriman Bank. We might call it an equitable assignment of the money. That was its only knowledge, its only interest. The deposit ticket, the telegram dictated by C. C. Slaughter directing the transfer, and his letter of confirmation gave the Mercantile Bank title, and when they were accepted by the Harriman Bank and the transfer made the transaction was completed just as it would have been had Grisard, the assistant cashier, walked into the Harriman Bank and received the cash.

Again we assert, not in a "desire to escape imputation of the knowledge of the facts", but because it is "the absolute truth with respect to the fact", that the Mercantile Bank had no knowledge of the agreement to loan. Its only knowledge was the deposit ticket.

Clearly the original credit to W. B. Slaughter personally was an oversight (Ex. 4, p. 98). The Harriman Bank pointed out the way the error could be corrected (Ex. 3, p. 97) and C. C. Slaughter followed the suggestion and transferred the credit. No doubt it would have been just as easy for him to send on a check signed as the note had been, but the telegrams were quicker.

POINT III.

There was no error on the part of the Trial Court in the admission of evidence offered on behalf of the plaintiff below.

The trial court opened wide the door for the reception of testimony relating to the dealings between the two Slaughters when it received evidence offered on behalf of the defendant over the objection of the plaintiff. The start was made in the cross examination of the one witness called by the plaintiff. It received in evidence defendant's Exhibits A, F, and I, being respectively the telegram directing the transfer of the \$30,000, the original application for loan, and the letter enclosing the note and collateral. It permitted the defendant to read from the deposition of Florence M. Buchanan, testimony to the effect that she wrote the letters (Exs. F and I) and the telegram (Ex. A) each at the dictation of C. C. Slaughter (pp. 44, 45). It permitted W. B. Slaughter to testify that he did not sign the \$30,000 note, that he did not sign the certificates of transfer on the back of the stock certificates pledged as collateral, and that he did not know prior to April, 1915, that an attempt had been made to borrow \$30,000 from the Harriman National Bank; and that he did not know prior to March, 1915, that he was elected a director and president of the First National Bank of Silverton (p. 56); and that he had no knowledge of the existence of Exhibits F, I, and A. (p. 58).

The plaintiff below thereupon became entitled not only to attack the credibility of the witness W. B. Slaughter called on behalf of the defendant,

but as well to show that he not only in fact did know of the borrowing of the \$30,000 and the use of the proceeds of the discount to purchase stock of the First National Bank of Silverton, but that he actually authorized the entire transaction, and for that purpose the testimony was offered to show not only that by letter father and son were advising with each other but also that C. C. Slaughter, his son, not only at the time of this transaction was, but for many years prior thereto, had been authorized to deal in the name of W. B. Slaughter in financial matters, to draw checks against his father's account and to handle at least one transaction of borrowing carried on in identically the same manner as the transaction now before the court and with the same Harriman National Bank.

The plaintiff also introduced in evidence a transaction of borrowing in 1912 upon a joint note of W. B. and C. C. Slaughter from the Harriman National Bank of \$25,000, the proceeds of which was credited to the account of the Mercantile National Bank, and by the latter bank credited to W. B. Slaughter, and by him used. The correspondence relating to that transaction was carried on by C. C. Slaughter, and in connection with Exhibit 20, a letter from the Harriman Bank addressed to C. C. Slaughter, cashier of the Mercantile National Bank, and relating solely to an individual borrowing by the two Slaughters for their own use, should be considered Exhibits 21, 22, 23 and 24, the first being a letter dated April 29, 1912, signed "W. B. Slaughter by C. C. Slaughter," the next a telegram bearing the same date signed "W. B. Slaughter," the next a letter signed "C. C. Slaughter, cashier," dated May 3,

and the last a letter also dated May 3, 1912, signed "W. B. Slaughter," the last two letters being each written upon Mercantile National Bank stationery, both apparently dictated by C. C. Slaughter to the same stenographer, and one advising that W. B. Slaughter was in Texas rather than in Pueblo, and that date being only four days after the telegram signed "W. B. Slaughter", requesting an extension, was sent.

Does this not clearly show that W. B. Slaughter was accustomed to carry on his banking business, in so far as it related to the borrowing of money, by permitting his son to handle the transaction and use his name? And does it not go even further and show knowledge of such a custom on the part of the Harriman Bank?

Exhibits 45, 46 and 47 are called incompetent. They are three letters from son to father. Exhibit 45 not only advises the father that the son had taken up with Mr. Thacher the matter of the purchase of the Silverton Bank, but it also says:

"In order I could take the matter up intelligently with Mr. Thacher I herewith enclose a letter which I showed him which is supposed to be from yourself."

There was clearly information conveyed to the father that the son had written a letter, signed the father's name and used it as if it were original. Yet, the answer to that letter (Exhibit 32) admittedly signed and sent by W. B. Slaughter (p. 75) makes not the slightest objection to such a method of dealing, but advises the son, in going ahead with the deal, to be careful, and continues:

"When you know the deal is going to be made I will write him (Mr. McCorkel) a letter if you think best, stating that I can't come and that he must act for me."

The dates of these two letters are respectively January 22 and January 25, 1915, and they clearly show knowledge on the part of W. B. Slaughter of the proposed purchase of the Silverton Bank long before the deal was consummated.

Exhibit 46, a letter dated February 3, and also relating to the purchase of the Silverton National Bank was admittedly answered by W. B. Slaughter under date of February 6, 1915 (Ex. 34, p. 117), and Exhibit 47 dated February 7, 1915, advising the father of the purchase of the Bank was admittedly answered by the father on February 9th. (Ex. 35, p. 119.) Those letters, received by W. B. Slaughter, conclusively establish the fact that he did have knowledge of the purchase of the First National Bank of Silverton, and that the son was not purporting to act solely for himself, but that the father was also financially interested in the transaction, and his answers just mentioned, together with the other exhibits, consent to such a purchase and the use of the father's funds by the son. Therefore, the testimony which the father gave on direct examination is not entitled to belief.

This leads us to the question—Did W. B. Slaughter know that his son was borrowing \$30,000 of the Harriman National Bank? The answer is found in another paragraph of the letter of February 3, 1915 (Ex. 46, p. 129), from the son to the father, in which it is stated:

“I would state I have made arrangements with the Harriman National Bank for them to assist us in carrying this deal of the First National Bank through if we consummate it, or at least until I get opportunity to make the deal according to my own ideas. Believe I hold one of the notes signed by you to the

Harriman National Bank, hence I will not send it to you but will send it direct to them. It will be for \$30,000 if they should ask you how much or anything about it."

Is there one word of objection contained in Exhibit 34 to such a borrowing at the bank? Not a suggestion of objection; on the other hand a letter conveying a tacit consent throughout.

Do not those letters just mentioned constitute a clear case of agency on the part of C. C. Slaughter to act for his father, and place the Harriman Bank in such a position that it could maintain an action against W. B. Slaughter to recover the face amount of the \$30,000 note?

The testimony of Mr. Werkheiser as to the conversation at El Paso, Texas, during the early part of March, 1915, was further confirmation of knowledge on the part of W. B. Slaughter of the purchase of the bank and his interest in the transaction. If he had no interest, what was the object of the execution of the certificate of authority dated February 15, 1915? (Ex. 44, p. 127). And if he had no knowledge of his election as a director, why did he execute the oath of office on February 22, 1915? (Ex. 48, p. 131). We come to the conclusion that W. B. Slaughter knew of the transaction, although not necessarily of the forgery of the collateral.

POINT IV.

The plaintiff-in-error presents no convincing argument or controlling authority.

Without question the Harriman Bank was entitled to rescind or cancel the loan at any time as against the Slaughters because of the fraud, but that is not true as to the Mercantile Bank. The Mercantile Bank had become the owner of those funds for value and without notice. That is the reason the Mercantile Bank is in a position superior to that of the Slaughters.

This is not a case where there are mere book entries to cover up a fraud. On the contrary, this is a case where the book entries are only evidence of the happening of a specific event, namely, the transfer from W. B. Slaughter, personal, to the Mercantile National Bank of \$30,000. That is just as real as if the Harriman Bank had handed to the Mercantile Bank \$30,000 in cash. The payment on Slaughter's check to Thacher to the extent of \$35,000 was, it is true, entered upon the books, but it was a happening in fact not in fiction, whereby the Mercantile Bank parted with \$35,000 of its funds, \$5,000 being cash which it had, and \$30,000 being cash which it was advised Slaughter had deposited to its credit in the Harriman Bank. The Mercantile Bank, therefore, in good faith, parted with its money, not in reliance on any loan to be made by the Harriman Bank to Slaughter, because it had no knowledge of such a loan, but in reliance on the fact that Slaughter had deposited in the Harriman Bank \$30,000 to the credit of the Mercantile Bank for his own personal bene-

fit, and that is not an uncommon way of dealing between correspondent banks situated at distant points.

The cases cited to sustain the proposition that mere book entries do not create an obligation, while good authority, have no application to the case at bar. Those are all cases where the original parties are still the ones in interest, and there is no third party who has, without notice and for value, parted with a thing of value. The Mercantile Bank is not now seeking to retain a gain by reason of the transaction, as was the case in *Selover v. First National Bank*, 77 Minn. 110. On the contrary, it is trying to recoup its loss brought about by the extreme negligence of the Harriman Bank. We say extreme negligence, because that negligence permeated its entire action. In the first place, it approved an application for a loan where the application was signed by means of the impression of a rubber stamp. In the second place, it made the loan upon a note bearing a forged signature when it had the true signature of the borrower in its files on the signature card. It accepted forged collateral; collateral which it knew was to be purchased with the proceeds of the loan it was then making. Then, to cap the climax, it transferred from an individual's account to a Bank account, on a mere telegram signed by the bank, and it accepted as confirmation of that act, a letter signed by the son of the individual whose account had been drawn against.

We fail to see where there was any regularity in the action of the Harriman Bank. We have no hesitancy in saying that if the Harriman Bank, instead of inviting a telegram directing a transfer, had insisted on a check, the usual order to charge against an account, such a check would have been

forthcoming. Perhaps forged, perhaps in reality signed by the elder Slaughter. At any rate, it would have been bound to know the signature of its depositor, and if it accepted the check it would have unquestionably been liable to the Mercantile. If, on the other hand, it had rejected the check, it might well be that a recovery could have been had against one of the two Slaughters the middle of February, whereas at the end of March they were hopelessly involved.

While great reliance is placed on the *Distilled Spirits* case, 11 Wall. 356, in that case it does not appear that the agent had any interest adverse to that of his principal. In other words, he was not seeking any benefit that was not the benefit of his principal.

That takes us to *Ditty vs. Dominion National Bank*, 75 Fed. 769; *Aldrich vs. Chemical Nat. Bank*, 176 U. S. 618; and *Holden v. N. Y. & Erie Bank*, 72 N. Y. 286, in each of which the bank had derived a specific benefit from the transaction, which benefit it was seeking to hold. In the present case there was no benefit to the Mercantile Bank. On the contrary, unless a recovery is had here the transaction produces a total loss.

LAST POINT.

The judgment entered upon the affirmation by the Circuit Court of Appeals should be affirmed with costs.

WILLIAM A. BARBER,
Solicitor for Defendant-in-Error.

STUART G. GIBBONEY,
GEORGE M. BURDITT,
Of Counsel.

N I O N

CASES ADJUDGED
IN THE
SUPREME COURT OF THE UNITED STATES
AT
OCTOBER TERM, 1918.

HARRIMAN NATIONAL BANK OF NEW YORK *v.*
SELDOMRIDGE, AS RECEIVER OF THE MER-
CANTILE NATIONAL BANK OF PUEBLO, COLO-
RADO.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT.

No. 173. Argued January 31, 1919.—Decided March 3, 1919.

A, the cashier of the M. National Bank and in control of its affairs, acting in the name of B, its president, by correspondence induced the H. National Bank to agree to lend B a sum of money to be secured by the joint note of A and B and certain collateral. A then bought certain shares from T, with a check on the M. Bank signed with B's name, and forwarded by mail to the H. Bank a forged note and collaterals in apparent compliance with the loan agreement, upon receipt of which the H. Bank credited B with the amount agreed on; but in the meantime the check to T had been paid by the M. Bank, and A, to meet it, had made a slip falsely purporting to show a deposit there by B of a check on the H. Bank for the amount of the proposed loan. Having at first credited B with the amount of the loan, the H. Bank, under instructions sent by A in the names of the M. Bank and of B, respectively, made book-keeping entries transferring the credit to the M. Bank, and later, upon receiving notice from B to cancel A's authority to act for the M. Bank, made further entries withdrawing the credit from the

(1)

M. Bank's account; and still later, upon learning that the M. Bank had failed, made additional entries to cancel the loan. B repudiated A's action and denied liability. *Held*: (1) That, as against the M. Bank, the H. Bank had the right to rescind and cancel the loan agreement for failure to comply with its conditions and for the fraud; (2) that the payment of the check to T and the making of the fraudulent deposit to meet it, having occurred before the H. Bank received the note and collateral or made any entry on its books, could not subject it to liability in favor of the M. Bank; (3) that the bookkeeping entries made by the H. Bank could not create such liability, in the absence of any consideration moving to it from the M. Bank, and in the absence of any ground for estoppel. P. 10.

240 Fed. Rep. 111, reversed.

THE case is stated in the opinion.

Mr. Charles E. Hughes, with whom Mr. Bertram L. Kraus was on the brief, for plaintiff in error:

The credit was obtained by fraud, the collateral security being forged, and hence the defendant was entitled to rescind. The evidence clearly shows that the note itself and the powers of attorney for transfer of the certificates of stock were forged. In view of the forged collateral, it makes no difference whether W. B. Slaughter authorized his signature and thus became a party to the note or not. *Bradley v. Seaboard National Bank*, 167 N. Y. 427; *Flatow v. Jefferson Bank*, 135 App. Div. 24; *Mann v. Franklin Trust Co.*, 158 App. Div. 491.

On the transfer of the credit, the Mercantile Bank took subject to all equities. It had no standing superior to that of the Slaughters. There was no negotiable paper used; the transfer was merely a book entry of credit. The suggestion of an account stated between the Mercantile Bank and the defendant is unavailing. The former was simply the transferee of a chose in action created through fraud. An account stated may be opened on proof of fraud or mistake. *Lockwood v. Thorne*, 18 N. Y. 285, 292. See also *Greenhalgh Co. v. Farmers National Bank*, 226

1. Argument for Plaintiff in Error.

Pa. St. 184; *Shipman v. Bank of State of New York*, 126 N. Y. 318, 327; *Talcott v. First National Bank*, 53 Kansas, 480; *Curry v. Wisconsin National Bank*, 149 Wisconsin, 413; *First National Bank v. Whitman*, 94 U. S. 343, 346. Mere book entries do not create an obligation. *Rankin v. City National Bank*, 208 U. S. 541, 545, 546; *Cherry v. City National Bank*, 144 Fed. Rep. 587; *Kendrick State Bank v. First National Bank of Portland*, 213 Fed. Rep. 610; *Modern Woodmen of America v. Union National Bank*, 108 Fed. Rep. 753; *Talcott v. First National Bank*, *supra*.

The defendant is not estopped from showing the fraud and denying liability. Even if the payment had been made upon the faith of a representation by the defendant that it would make the loan or extend the credit, the representation being explicitly conditioned upon the receipt of described collateral, the defendant could not be held on the delivery of forged collateral. To base an estoppel, the representation must be taken as it is made. There was no payment which changed the position of the Mercantile Bank. The defendant is thus clearly entitled to rescind, both as against the Slaughters and the Mercantile Bank; and there is no basis for the finding of estoppel. *Selover v. First National Bank*, 77 Minnesota, 140. The receiver contends that if W. B. Slaughter had drawn a check against the amount credited to him and given the check to the Mercantile Bank which had been paid, the latter could have retained the avails of the check, citing *American National Bank v. Miller*, 185 Fed. Rep. 338; 229 U. S. 517; *National Bank v. Burkhardt*, 100 U. S. 686. But this introduces a question of negotiable paper.

C. C. Slaughter was acting for the bank; he had no interest adverse to the bank; it was a transaction in fraud of the defendant but not in fraud of the Mercantile Bank. If the bank is to take the benefit of the act of its agent it

must take the burden of what the agent knows at the time of the transaction. *The Distilled Spirits*, 11 Wall. 356, 366-368; *Ditty v. Dominion National Bank*, 75 Fed. Rep. 769; *Aldrich v. Chemical National Bank*, 176 U. S. 618, 633, 634; *Holden v. New York & Erie Bank*, 72 N. Y. 286.

The receiver stands in no better position than the bank. *Rankin v. City National Bank*, 208 U. S. 541.

Mr. Stuart G. Gibboney, with whom Mr. William A. Barber and Mr. George M. Burditt were on the brief, for defendant in error:

The Mercantile Bank, having to its credit \$53,000, was entitled to use the money as it saw fit unless it was guilty of fraud, and the defendant was bound to retain that amount and to pay it out only upon the order of the Mercantile Bank. Concededly the defendant withdrew \$30,000 without any such order. A bank cannot discharge its liability to a depositor except by payment to him or on his written order. *Leather Manufacturers' Bank v. Merchants' Bank*, 128 U. S. 26.

The statement sent to the Mercantile Bank showing the credit was binding upon the defendant unless there was some mutual mistake or fraud. *Leather Manufacturers' Bank v. Morgan*, 117 U. S. 96; *Daintry v. Evans*, 148 App. Div. 275. No mistake on the part of the Mercantile Bank has been shown. The evidence shows that it was the practice of C. C. Slaughter to draw checks against his father's account, to which the latter never objected. The Mercantile Bank had no knowledge of the loan agreement, nor did it rely upon any such agreement. The only knowledge it had was the deposit ticket and the subsequent information from the defendant that the \$30,000 had been placed to its credit. The transfer of the credit had the same effect as would the deposit of cash. The case is like *American National Bank v. Miller*, 229 U. S. 517, where it was held that the collection of a

1. Argument for Defendant in Error.

check and crediting by a bank on which the check is drawn, in the absence of fraud or mistake, constitutes payment. See also *National Bank v. Burkhardt*, 100 U. S. 686; *Oddie v. National City Bank*, 45 N. Y. 735. The fact that the Mercantile Bank did not forward a check signed by W. B. Slaughter is immaterial. It had his authority, his assignment, in the form of a deposit ticket; it paid out all of the funds for his benefit. The defendant accepted a telegram as sufficient authority for the transfer. Both banks acted in good faith. Care upon defendant's part would have saved the situation.

The knowledge of C. C. Slaughter cannot be imputed to the Mercantile Bank, because the Slaughters were acting in their individual capacities, in a transaction in which they were personally interested, and their interests were adverse to those of the bank. *American National Bank v. Miller*, *supra*; *American Surety Co. v. Pauly*, 170 U. S. 133, 156; *Levy & Cohn Co. v. Kaufman*, 114 Fed. Rep. 170; *Bank of Overton v. Thompson*, 118 Fed. Rep. 798; *Hilliard v. Lyons*, 180 Fed. Rep. 685; *In re United States Hair Co.*, 239 Fed. Rep. 703. The Mercantile Bank did not derive its right to the \$30,000 by any connection with the loan, but by paying out its money on the order of W. B. Slaughter's agent, on the assertion that the amount had been deposited to its credit in the defendant bank.

While the defendant was entitled to rescind as against the Slaughters because of the fraud, this is not true as to the Mercantile Bank, which had become the owner of those funds for value without notice. The book entries are only evidence of the happening of a specific event—the transfer from W. B. Slaughter's account to that of the Mercantile Bank of \$30,000. That is just as real as if the defendant had handed to the Mercantile Bank \$30,000 in cash.

The cases cited to the effect that mere book entries do

not create an obligation are inapplicable here. Those were cases where the original parties were still the ones in interest, and there were no third parties who had, without notice and for value, parted with a thing of value. The Mercantile Bank is not now seeking to retain a gain by reason of the transaction, as in *Selover v. First National Bank*, 77 Minnesota, 110, but to recoup its loss brought about by the extreme negligence of the defendant. In *The Distilled Spirits Case*, 11 Wall. 356, the agent had no interest adverse to that of the principal. In *Ditty v. Dominion National Bank*, 75 Fed. Rep. 769; *Aldrich v. Chemical National Bank*, 176 U. S. 618; and *Holden v. New York & Erie Bank*, 72 N. Y. 286, the bank had derived a specific benefit from the transaction which it was seeking to hold.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

Following the failure in March, 1915, of the Mercantile National Bank of Pueblo, Colorado, the Receiver appointed by the Comptroller commenced this suit to recover from the Harriman National Bank of New York City \$30,000, alleged to be due to the Mercantile Bank. On issue joined before a jury, the court, after refusing a request of the Harriman National Bank for a peremptory instruction directing a verdict in its favor, granted a request of like character made by the Receiver, and a judgment on the resulting verdict for the amount claimed was entered.

The case is before us on error to the judgment of the court below affirming that of the trial court, our jurisdiction to review resulting because the case from its inception involved the enforcement of the National Banking Act, and therefore, was not dependent in the trial court solely upon diversity of citizenship. *Auten v.*

1.

Opinion of the Court.

United States National Bank, 174 U. S. 125, 141; *International Trust Co. v. Weeks*, 203 U. S. 364, 366.

The case is this. W. B. Slaughter, through stock ownership, controlled the Mercantile National Bank of Pueblo, Colorado. He was president and his son, C. C. Slaughter, was cashier. Prior to 1915, Slaughter, the president, removed his residence from Pueblo to Texas, engaging there in the cattle business and leaving his son, the cashier in complete control of the Mercantile Bank and of all its affairs. W. B. Slaughter was also the president of the Silverton National Bank of Silverton, Colorado, and controlled the affairs of that bank by the ownership of a majority of its stock. At Silverton there was another national bank carrying on business, the First National, the majority of whose stock was owned by one Thatcher.

The correspondent of the Mercantile Bank in New York City was the Harriman National, with which it had a checking account. On January 28, 1915, C. C. Slaughter, the cashier of the Mercantile, dictated a letter to the Harriman which was dated at Pueblo and written on the letterhead of the Mercantile Bank, purporting to be from W. B. Slaughter, whose signature was affixed by a rubber stamp. By this letter its assumed writer, after referring to his ownership and control of the Silverton National, stated his purpose to buy out the interest of Thatcher in the First National Bank of Silverton and after doing so to consolidate the two banks, and requested a loan of \$30,000 to enable him to accomplish the purpose. It was stated that it was proposed to evidence the loan by a note at sixty days, to be signed by the writer, W. B. Slaughter, and by his son C. C. Slaughter, if the bank so desired, and to secure the note by the pledge of 500 shares of the Mercantile and 400 shares of the First National of Silverton. The Harriman Bank received this letter on the first of February and at once telegraphed W. B. Slaughter, president of the Mercantile Bank at Pueblo,

that, whenever desired, the Harriman would be willing to make the loan, as requested. On the same day the bank wrote a letter to W. B. Slaughter, president at Pueblo, but marked it personal, repeating and confirming the telegram, and inclosing a blank form of collateral note to be executed and sent to the bank with the collateral when the money was desired.

The telegram of the first of February announcing the willingness of the Harriman Bank to make the loan having come into the hands of C. C. Slaughter on the day it was sent, he ordered a seal to be made which he said was intended as the seal of the First National Bank of Silverton, and on the fifth of February bought from a printer blank forms of certificates of stock. On the next day, Saturday the 6th, purporting to act as agent of W. B. Slaughter, C. C. Slaughter bought from Thatcher his interest in the First National of Silverton, and gave a check in the name of W. B. Slaughter and as his representative, on the Mercantile National, for \$35,000 in part payment. On Sunday, February 7th, C. C. Slaughter caused a letter to be prepared falsely purporting to be written and signed by W. B. Slaughter, acknowledging the receipt of the telegram sent by the Harriman Bank on the first and asking that the loan be consummated. In this letter there was returned the collateral note which the bank had sent for execution, along with the promised collateral, that is, certificates for 400 shares of the First National of Silverton and 500 shares of the Mercantile at Pueblo. The signature of W. B. Slaughter to the note was forged and the collaterals were also forged, the first, the certificates of the Silverton Bank stock, because they were fabricated by the use of the printed certificates and seal which had been acquired a few days before and described shares which had no existence, and the second, the Mercantile Bank stock, because, although the certificates represented stock standing in the name of W. B. Slaughter on the

1.

Opinion of the Court.

books of that bank, the powers of attorney purporting to have been given by W. B. Slaughter to enable them to be transferred to the Harriman Bank, were forged.

To meet the check for \$35,000 given on Saturday for the Thatcher purchase, on Monday morning, February 8th, C. C. Slaughter made out a deposit slip to show the deposit by W. B. Slaughter of a check on the Harriman National for \$30,000, although no such check was in fact deposited; and on that day the check in favor of Thatcher for \$35,000 was paid and debited by the Mercantile to W. B. Slaughter's account. The letter of the seventh sending the note to the Harriman reached that bank on the tenth and, complying with the request it contained, a credit in favor of W. B. Slaughter for \$30,000, the amount covered by the loan, was entered by the Harriman on its books.

On the seventeenth of February the Mercantile Bank overdraw its account in the Harriman to the extent of \$8,000, which that bank honored. It, however, telegraphed the Mercantile, calling attention to the overdraft and asked whether a remittance to cover it had been made. The telegram, moreover, referred to the \$30,000 credit in favor of W. B. Slaughter and asked whether possibly it was intended that the amount of the loan credit should be placed to the account of the bank. In reply, C. C. Slaughter dictated a telegram in the name of the Mercantile Bank instructing that the amount of the credit of W. B. Slaughter be transferred to the credit of the Mercantile. On the receipt of this telegram the Harriman made the necessary bookkeeping entries to transfer the credit of \$30,000 from the account of W. B. Slaughter to that of the Mercantile National Bank. On the next day, the eighteenth, however, the Harriman wrote W. B. Slaughter, Mercantile National Bank, Pueblo, informing him of the instructions they had received from C. C. Slaughter and what they had done under them, and ask-

ing the former's approval. This letter was replied to on February 22d by C. C. Slaughter confirming his previous telegram and saying that the original intention was that the money borrowed should go to the credit of the Mercantile Bank for the use of W. B. Slaughter.

Thus things stood until the twenty-third of March, when the Harriman received a telegram from W. B. Slaughter, president of the Mercantile Bank, telling them to cancel all authority of C. C. Slaughter to act as an officer of the Mercantile because he had resigned. The Harriman thereupon telegraphed and wrote W. B. Slaughter, informing him of what had transpired on the subject of the credit for the loan under the note and its transfer, and saying that as he had given no personal instructions on the subject, they had made bookkeeping entries taking the \$30,000 out of the account of the Mercantile so as to hold it for a full understanding of the situation; and when, a few days later, the Harriman learned of the failure of the Mercantile, such entries were made as to cancel the loan without diminishing or changing the credits which otherwise existed in favor of the Mercantile.

Subsequently W. B. Slaughter notified the Harriman that he had never applied for the loan in question, or signed the note which evidenced it, and denied all liability. The appointment of the Receiver and the bringing of the suit which we have stated at the outset followed in due season.

Passing the fact that both parties to the loan agreement, the Harriman Bank on the one side and W. B. Slaughter on the other, insist, although for different reasons, that the loan agreement has no existence, there nevertheless can be no room for dispute that such contract, by the failure to comply with its conditions and by the fraud and forgery committed concerning the collaterals as between the parties to it and those in privity, was rightly canceled and can be the source of no obligation against

1.

Opinion of the Court.

the Harriman Bank. The right of the Mercantile Bank as here asserted, if it has any existence, must rest, therefore, not in the loan agreement, but on some condition or consideration extraneous to that contract creating as against the Harriman and in favor of the Mercantile the duty to pay the amount which both the courts below awarded.

No semblance of ground, however, supporting that view results from the undisputed facts which we have stated unless it can be sustained from two considerations: (1) the payment which was made by the Mercantile on February 8th of the check purporting to be drawn by W. B. Slaughter in favor of Thatcher and the making by C. C. Slaughter on the eighth of the fraudulent and false deposit slip purporting to show the deposit on that day by W. B. Slaughter of a check drawn by him on the Harriman for \$30,000; and (2) the bookkeeping entries which were made by the Harriman on the eighteenth transferring the credit for the amount of the agreed loan from the account of W. B. Slaughter to that of the Mercantile Bank. But a moment's thought demonstrates that the circumstances referred to cannot possibly sustain the conclusions stated. This is true as to the first because both the payment of the check by the Mercantile and the making of the false deposit slip took place before the Harriman had even received the collateral note or made any entry on its books concerning the same; and the second because the mere bookkeeping entry made by the Harriman of credit to the Mercantile, in the very nature of things, was incapable alone of conferring rights on the Mercantile to which it was not otherwise entitled, especially in the absence of all consideration moving from the Mercantile to the Harriman and the non-existence of any condition upon which to base even the pretext of estoppel in favor of the Mercantile as against the Harriman resulting from action taken by the former upon the faith of the book-

keeping credit. Indeed, when the reasoning upon which the relief below was awarded is considered, and the arguments pressed at bar sustaining that result are weighed, they all at last come to the assumption that by some undisclosed process the Mercantile Bank was entitled to enforce as against the Harriman the contract for the loan agreement made with W. B. Slaughter, without the duty to comply with the obligations of that contract, and therefore became possessed of the power to enforce the contract against the Harriman despite the fraud and forgery practiced upon the Harriman in the attempt which was made to procure the benefits of the loan agreement.

It follows that the judgment of the Circuit Court of Appeals and that of the District Court must be and they are reversed, and the case be remanded to the District Court with instructions, that after setting aside its judgment, it take such further proceedings as may be in conformity with this opinion.

And it is so ordered.